



2007

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Donald H. Stone

University of Baltimore School of Law, dstone@ubalt.edu

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Recommended Citation

You Take My Space, I Take Your Air: An Empirical Study of Disabled Parking and Motor Vehicle Laws for Persons with Disabilities, 33 Ohio N.U. L. Rev. 665 (2007)

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You Take My Space, I Take Your Air: An Empirical Study of Disabled Parking and Motor Vehicle Laws for Persons with Disabilities

BY DONALD H. STONE*

I. INTRODUCTION

Reserved parking and specialized treatment are necessary to permit individuals with disabilities access to goods, services, and employment opportunities on an equal basis with the general public. Why are disabled drivers entitled to disabled parking spots? What is the procedure for an individual with a disability to receive special disability registration license plates?¹ What is the role of the Medical Advisory Board in reviewing the ability of disabled drivers to get behind the wheel?² What, if any, obligation or responsibility does a physician treating a disabled driver have to notify the Department of Motor Vehicles of the patient's condition or to third parties injured by a disabled driver?³

Does the Americans with Disabilities Act of 1990 ("ADA"),⁴ a landmark civil rights act protecting an individual with a physical or mental impairment,⁵ require the removal of architectural barriers to create designated accessible parking spaces at places of public accommodation? Does the ADA require that restaurants, grocery stores, law offices, and laundromats provide designated parking for individuals with disabilities?

Empirical data provided in this article is submitted to serve as a backdrop for elaboration and comparison. Fifty places of public accommodation⁶ were

* Associate Dean for Academic Affairs and Professor of Law, University of Baltimore School of Law. The author gratefully acknowledges the assistance of Tiffany Rodenberger, a 2006 graduate of the University of Baltimore School of Law and Sarah Mann, a law student at the University of Baltimore School of Law, for their outstanding legal research in the preparation of this Article. I dedicate this Article to Mr. Harold M. Shapiro, my father-in-law who is a Disabled American Veteran entitled to a disabled parking privilege, for inspiring the original idea for this Article.

1. See MD. CODE ANN., TRANSP. § 13-616.1 (West 2007).

2. See *id.* § 13-616.1.

3. See *Robinson v. Health Midwest Development Group*, WD 58290, 2001 Mo. App. Lexis 353 (W.D. Mo. Mar. 6, 2001) (reversed by Missouri Supreme Court on other grounds, 58 S.W.3d 519 (Mo. 2001)).

4. Pub. L. No. 101-336, 104 Stat. 327 (codified as amended in scattered sections of 42 U.S.C.).

5. See 42 U.S.C. § 12101(b)(1) (2007). The purpose of the Act is to facilitate "the elimination of discrimination against individuals with disabilities." *Id.*

6. Public accommodation encompasses "a facility, operated by a private entity, whose operations affect commerce." 28 C.F.R. § 36.104 (2007).

surveyed to identify and determine compliance with the provision of accessible parking spaces for disabled drivers in a variety of locations in Maryland.⁷

A review of a variety of state motor vehicle statutes⁸ are compared and analyzed, ranging from the enumerated covered disabilities, the physician certification process, the provision of placards and disability plates, parking space requirements fees, parking privileges, and enforcement provisions.

This article will discuss and analyze various court decisions concerning reasonable accommodations for drivers with disabilities. It will provide insight and understanding of the impact of the ADA and the direction courts are heading as they confront this challenging and important area of the law. Finally, this article will offer recommendations regarding accessible parking and Medical Advisory for the disabled driver.

"You take my space, I take your air" was the battle cry within the disability movement in the pre-ADA days. Prior to the enactment of the ADA, when a disabled person simply wanted a parking space in order to visit a place of public accommodation, such as a grocery store or physician's office, there was no clear national mandate to provide accessible parking for a person with a disability. A segment of the disabled community would comment that if a non-disabled individual was bold enough to park in a space reserved for a disabled individual, the disabled individual's only recourse was to take the air out of the tire of that driver's vehicle. There was no national civil right's act designed to protect the disabled and few state laws were designed to provide access to the disabled, so self help was the answer in the minds of some disabled individuals. Due to growing frustration and limited options, "you take my space, I take your air" was the mantra of some in the early stages of the disabled movement. Fortunately, the ADA and state laws have stepped in to address, for the most part, parking issues facing the disabled driver.

II. THE AMERICANS WITH DISABILITIES ACT

The ADA, enacted in 1990, created sweeping reform on the face of discrimination law as it protects the rights of persons with disabilities. According to 1990 congressional findings, which were the basis of the enactment of the ADA, approximately 43 million Americans had at least "one or more physical or mental disability[es]".⁹ According to the 2000 U.S. Census

7. Donald H. Stone, Results of 2005-2006 Disability Parking Survey (results are on file with the author). The empirical study included a five-page questionnaire. A blank survey form is provided *infra* at Appendix A.

8. MD. CODE ANN., TRANSP. § 13-616 (West 2007); FLA. STAT. ANN. §§ 316.1955- 320.084, 553.5041 (West 2006); CAL. VEH. CODE §§ 21458-22511.59 (West 2007); TEX. TRANSP. CODE ANN. §§ 504.201- 681.003; 625 ILL. COMP. STAT. ANN. 5/3-616-5/11-1301.7(West 2006).

9. 42 U.S.C. § 12101(a)(1). Congress noted this figure was increasing as the population grew older. *Id.*

Data, almost 50 million people, about 19% of all Americans over age five, reported having a disability.¹⁰ Almost 42% of the population age sixty-five or over reported a disability,¹¹ reflecting the prediction of Congress that the number of Americans with one or more physical or mental disability is increasing as the population as a whole is growing older.¹² Congress acknowledged that society has a tendency “to isolate and segregate individuals with disabilities” and that such discrimination “continue[s] to be a serious and pervasive social problem.”¹³ Discrimination against individuals with disabilities persists in many areas, including employment, housing, public accommodations, transportation, and access to public services.¹⁴ “Individuals with disabilities continually encounter various forms of discrimination, including . . . the discriminatory effects of architectural, transportation, and communication barriers. . . .”¹⁵ Congress also found that the nation’s goals for “individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency. . . .”¹⁶ The ability to drive one’s car and park in a convenient and accessible space is essential for a disabled driver seeking “the opportunity to compete on an equal basis and to pursue opportunities for which our free society is justifiably famous. . . .”¹⁷

The declaration of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”¹⁸ The stated purpose of the ADA is to furnish “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”¹⁹ According to the 2000 U.S Census data, 21.2 million individuals have a physical disability limiting basic physical activities such as walking.²⁰ These individuals have the greatest need for accessible parking to enable them to participate in and contribute to the community.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodations, including facilities operated by private

10. JUDITH WALDROP & SHARON M. STERN, CENSUS 2000 BRIEF, DISABILITY STATUS: 2000 2 (2003).

11. *Id.*

12. *See* 42 U.S.C. § 12101(a)(1).

13. *Id.* § 12101(a)(2).

14. *Id.* § 12101(a)(3).

15. *Id.* § 12101(a)(5).

16. *Id.* § 12101(a)(8).

17. 42 U.S.C. § 12101(a)(9).

18. *Id.* § 12101(b)(1).

19. *Id.* § 12101(b)(2).

20. WALDROP & STERN, *supra* note 10, at 2. The total number of 21,200,000 people is 8.2% of the population. *Id.* at 7.

entities whose operations affect commerce.²¹ The scope and breadth of the ADA brings disabled drivers from parking at a bank, bakery, barber shop, or bowling alley, within the watchful eye of the ADA. In order for the disabled driver to receive the benefits of such places, it may be necessary to provide reasonable accommodations that will make facilities and eligibility criteria usable for individuals with disabilities.²²

The importance of accessible and sufficient parking for the disabled driver is a crucial prerequisite to access inside the public accommodation. The first priority of a public accommodation should be to provide access from public sidewalks and parking, including providing accessible parking spaces.²³ The measures are to include providing accessible parking spaces.²⁴ "This priority on 'getting through the door' recognizes that providing actual physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities."²⁵ The importance of accessible and sufficient parking for the disabled driver is a crucial prerequisite to access inside the public accommodation. The ADA's declaration that "[a] public accommodation shall afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual. . . ." is a centerpiece of the law.²⁶

A dispute often arises between a landlord and tenant in a shopping center regarding the responsibility for providing accessible parking. This was the case in *Frotten v. Barkan*, involving three retail merchants, Brooks Pharmacy, Papa Gino's and, Fashion Bug, which are located in a plaza owned by DeMoulas Supermarkets.²⁷ A disabled person claimed that there were ADA architectural barrier violations in the three stores and brought suit against DeMoulas as the owner of the premises.²⁸ The court joined the three merchants in the action because they had an interest in the question of whether the barriers violated the ADA and, if so, whether residual measures were

21. 28 C.F.R. § 36.104 (2007). The places of public accommodation include 12 categories: places of lodging, restaurants, theaters, places of public gathering, shopping centers, service establishments, public transportation terminals, libraries, parks, social service establishments, and golf courses. *Id.*

22. 42 U.S.C. §12111(9).

23. 28 C.F.R. § 36.304(c)(1) (2007).

24. *Id.*

25. 28 C.F.R. pt. 36, App. B.

26. 28 C.F.R. § 36.203(a).

27. *Frotten v. Barkan*, 219 F.R.D. 31, 31-32 (D. Mass. 2003); *see also* *Botosan v. Paul McNally Realty*, 216 F.3d 827 (9th Cir. 2000) (A landlord has independent obligation to comply with ADA that may not be eliminated by contract (lease)).

28. *Frotten*, 219 F.R.D. at 31-32.

readily available.²⁹ The appropriate solution was to join together both the landlord of the plaza and the individual merchants with alleged ADA violations. This allowed the court to ultimately rule on responsibility of architectural accessibility within the plaza, as well as within individual merchants' leasing space.³⁰ The court cited the *Botoson* rule that a "landlord has an independent obligation to comply with the ADA that may not be eliminated by contract [such as a lease]."³¹

The fundamental claim of most disabled drivers seeking a parking space at a place of public accommodation is the opportunity to participate.³² Casey Martin, a professional golfer suffering from a degenerative and progressive circulatory disorder in his leg, sought reasonable accommodations in order to compete in the Professional Golf Association ("PGA").³³ Mr. Martin, who sought the use of a golf cart while competing in the PGA, asked the Supreme Court to decide whether a disabled contestant may be denied the use of a golf cart that could "fundamentally alter the nature" of the tournament in allowing him to ride when all other contestants must walk.³⁴ The court was confronted with the issue of whether modifications in the policies, practices, or procedures were fundamental alterations in the nature of the game of golf. The Supreme Court clearly resounded with the statement that a waiver of the walking rule would not create a fundamental alteration and Martin was permitted to use a golf cart.³⁵

As the disabled driver simply seeks a place to park, Casey Martin simply asked for a reasonable way to move from golf hole to golf hole throughout the course. The significance of leveling the playing field for Casey Martin to compete is similar to providing a disabled driver an accessible parking space to enter the door of the public accommodation open to all citizens.³⁶

To remove the unnecessary barriers shackling people with disabilities is to avail society of the full range of their talents and abilities.³⁷ During congressional testimony and deliberation of the Americans with Disabilities Act, individuals provided compelling reasons for the passage of the new

29. *Id.* at 32.

30. *Id.*

31. *Id.* at 32 (quoting *Botosan*, 216 F.3d at 833).

32. See 28 C.F.R. §36.203(b) (2007).

33. *PGA Tour v. Martin*, 532 U.S. 661 (2001).

34. *Id.* at 664-65.

35. *Id.* at 689-90.

36. See Donald H. Stone, *The Game of Pleasant Diversion: Can we Level the Playing Field for the Disabled Athlete and Maintain the National Pastime*, In *the Aftermath of PGA Tour, Inc v Martin: An Empirical Study of the Disabled Athlete*, 79 ST. JOHN'S L. REV. 377 (2005).

37. *Id.*

federal disability law.³⁸ The major reasons why people with disabilities do not frequent places of public accommodation include not feeling welcome, fear and self-consciousness about their disability, and architectural and transportation barriers.³⁹ The provision of safe and abundant parking for the disabled driver will open up doors of full opportunity for participation in the mainstream of public accessibility.

Parking for disabled drivers is at a crossroads. States are reviewing the rules as they impact disabled drivers.⁴⁰ The public is claiming misuse of the disabled parking rules.⁴¹ Older disabled drivers are under greater scrutiny regarding safety on the road.⁴² Specialized parking for the disabled continues to be necessary and important as individuals with disabilities continue to seek acceptance and understanding.⁴³

III. STATISTICAL REVIEW AND ANALYSIS OF DISABILITY PARKING SURVEY

The empirical data contained in this article is provided to serve as a backdrop for purposes of elaboration and comparison.⁴⁴ Fifty places of public accommodation⁴⁵ throughout Maryland⁴⁶ were surveyed to obtain data on

38. H.R. REP. NO. 101-485, Pt. 2 (1990).

39. *Id.* at 316-17.

40. MD. DEP'T OF TRANSP., A REPORT TO THE MARYLAND GENERAL ASSEMBLY REGARDING TASK FORCE ON PARKING FOR INDIVIDUALS WITH DISABILITIES (2004), SB 368, Ch. 268 Acts of 2004 (Dec. 2004), <http://www.marylandmva.com/Resources/DisabilityparkingTFR.pdf> [hereinafter TASK FORCE].

41. Jill Rosen, *Limits on Disabled-parking Permits Due to Begin*, BALT. SUN, Dec. 31, 2005, at 3.B. There is so much misuse claims state Senator Nancy Jacobs, wrong people are getting handicapped tags and they are taking parking spaces from the people who need them.

42. Francine Russo, *Driving us Crazy*, TIME, Aug. 8, 2005 (Only Illinois and New Hampshire required mandatory age-based road tests for citizens ages seventy-five years old and older).

43. In Maryland, the number of disabled drivers with disabled parking license plates was 89,000 as of December 2004. After January 1, 2006, the Maryland Motor Vehicle Administration estimates there will be 60,000 vehicles displaying disabled parking license plates. The reduction is due in large part to the restrictions placed on transporters of disabled individuals who themselves were not disabled. TASK FORCE, *supra* note 40, at 7.

44. Stone, 2005-2006 Disability Parking Survey, *supra* note 7. The empirical study included a five-page survey conducted at fifty public accommodations. A blank survey is provided *infra* at Appendix A.

45. Regulations implementing Title III of the ADA,

public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories—(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor; (2) A restaurant, bar, or other establishment serving food or drink; (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; (4) An auditorium, convention center, lecture hall, or other place of public gathering; (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment; (6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral

issues related to parking accommodations to disabled drivers. Significant challenges continue to exist for the disabled driver seeking accessible parking spaces. Lack of car and van accessible parking spaces, deficiencies in signage to identify accessible parking, and lack of maximum fine postings are a few of the findings of the survey.⁴⁷

The empirical data provided in this article is submitted to highlight the extent of reasonable accommodations provided or denied to disabled drivers. All twelve categories of public accommodation were surveyed between October 2005 and April 2006.

The ADA Accessibility Guidelines (“ADAAG”)⁴⁸ provide the requirements for the number of accessible parking spaces in parking lots of places of public accommodations. As the ADA’s findings focus on assuring “equality of opportunity, full participation, independent living and economic self-sufficiency” for disabled persons,⁴⁹ the ability to drive and park one’s vehicle to a public accommodation is of utmost importance. The ADA’s purpose to eliminate discrimination against individuals with disabilities is without teeth when access to a public accommodation can not be provided for the disabled driver. The survey⁵⁰ revealed that at twenty-six percent of the public accommodations, sufficient accessible parking spaces were not provided.

parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment; (7) A terminal, depot, or other station used for specified public transportation; (8) A museum, library, gallery, or other place of public display or collection; (9) A park, zoo, amusement park, or other place of recreation; (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; (11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

28 C.F.R. § 36.104 (2007).

46. Stone, 2005-2006 Disability Parking Survey, *supra* note 7. The surveys were conducted in various counties and cities in Maryland, including counties of Anne Arundel, Baltimore, Charles, Harford, Howard, Montgomery, Prince George’s, St. Mary’s and the City of Baltimore.

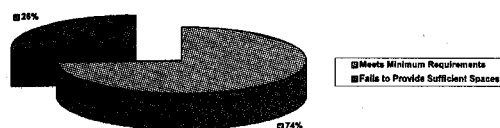
47. *Id.*

48. U.S. ARCHITECTURAL & TRANSP. BARRIERS COMPLIANCE BD., AMERICAN WITH DIASABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES (2002), <http://www.access-board.gov/adaag/ADAAG.pdf> [hereinafter ADAAG].

49. 42 U.S.C. § 12101(a)(8) (2007).

50. See Stone, 2005-2006 Disability Parking Survey, *supra* note 7.

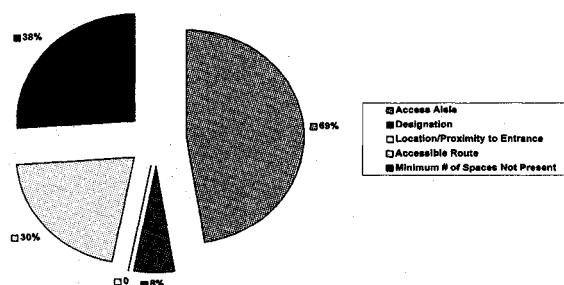
Accessible Parking Spaces in Lots Surveyed:
Questions 3-5



The survey also revealed several deficiencies in parking lots at the public accommodations. The three most significant defects were the lack of access aisle designation and the deficiencies in sign designation and accessible route⁵¹ necessary for a wheelchair user to exit their vehicle and safely transverse into the entrance of the public accommodation. Sixty-nine percent were deficient in the access aisle, thirty-eight percent were deficient in signage designation and thirty percent lacked proper access routes. The deficiencies in access aisle and accessible route were particularly troubling, as a disabled driver may find an accessible parking space but find it too narrow to accommodate a wheelchair user to travel from one's parked car into the public accommodation to receive the goods or services necessary for their visit in the first place.

51. ADAAG, *supra* note 48, at 4.6.3 (Requirement of 8 feet wide parking space and 5 foot access aisle).

Percentages of Types of Deficiencies in Lots Failing to Provide Sufficient Accessible Spaces:
Questions 4 & 5



Often a disabled person drives a van in order to accommodate a wheelchair. According to the ADAAG, van parking spaces are required to be larger than a car parking space.⁵² A van parking space is required to be eight feet wide, with a minimum of eight feet wide access aisles,⁵³ and ninety-eight inches of vertical clearance available for lift-equipped vans.⁵⁴ The survey revealed that in thirty-two percent of the parking lots at the public accommodations, there was not one parking space that was van accessible.⁵⁵ The number of van accessible parking spaces under federal law is one in every eight spaces;⁵⁶ however, Maryland is more restrictive, mandating one in every four accessible spaces shall be van accessible.⁵⁷ The thirty-two percent deficiency rate for van access is a significant impediment to many disabled drivers.

52. *Id.*

53. *Id.*

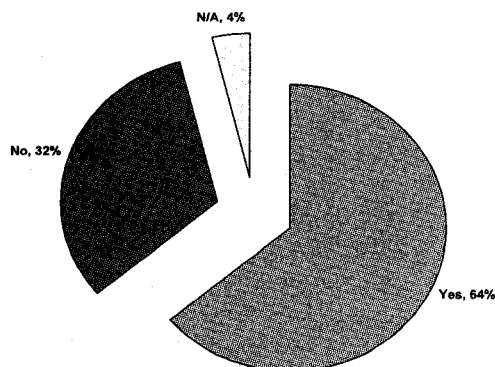
54. *Id.* at 4.6.5.

55. Stone, 2005-2006 Disability Parking Survey, *supra* note 7, question 6.

56. ADAAG, *supra* note 48, at 4.1.2(5)(b). At least one of every eight accessible spaces must be van accessible, with a minimum of one van accessible spaces in all cases. *Id.*

57. MD. CODE REGS. § 05.02.02.07(B)(3)(a).

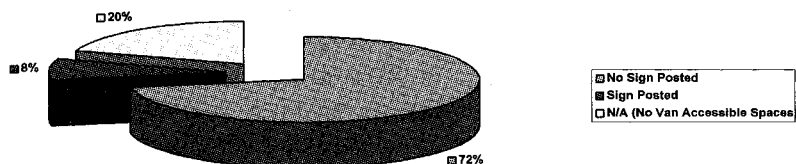
Is there at least one parking space that is van accessible?
Question 6



In order for the disabled driver to locate the accessible parking spaces in the public accommodation's parking lot, it is necessary for proper signage to identify the designated space. Both for the non-disabled driver to respect and avoid parking in the disabled parking space and to permit easy access and parking for the disabled driver, signage is of the utmost importance. Unfortunately, the survey found that in twenty percent of the lots, no van signage was present.⁵⁸ The lack of signage for vans creates uncertainty and confusion for both the disabled and non-disabled driver.

58. Stone, 2005-2006 Disability Parking Survey, *supra* note 7, question 19, at 55.

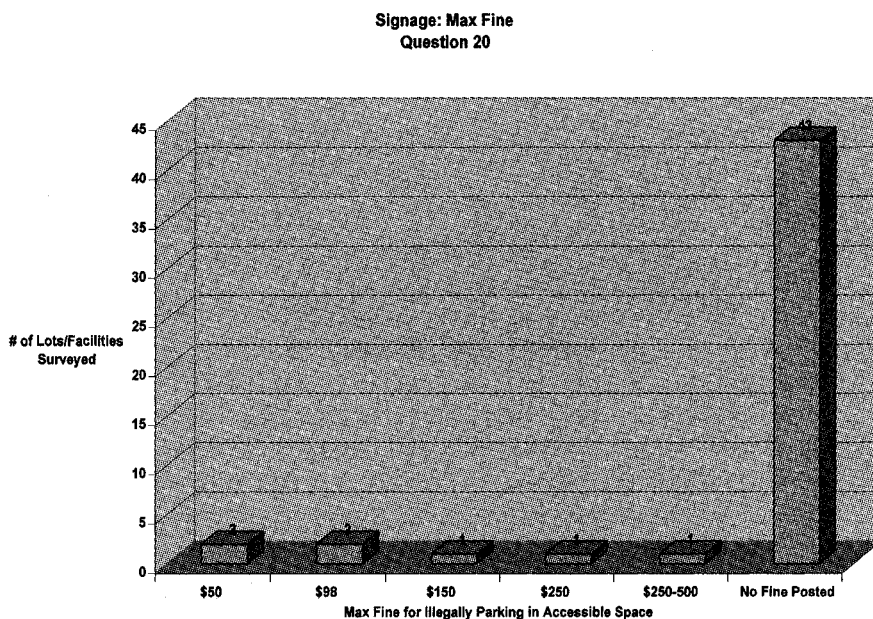
Signage: "No Parking in Access Aisle" for Van Accessible Spaces
Question 19



Another fact the survey revealed was the lack of signage announcing the maximum fine for illegally parking in accessible spaces. Because a financial penalty is one of the ways to prevent non-disabled drivers from parking their vehicles in spaces allotted for disabled drivers, posting the financial penalty is a necessary element of accessible parking. In forty-three percent of the parking lots surveyed,⁵⁹ no fine was posted. Interestingly, in the lots that did post the maximum fine for illegal parking, the fine ranged from a low of \$50.00 to a high of \$500.00.⁶⁰ The higher the fine, the greater disincentive to occupy a designated space unlawfully.

59. *Id.*, at 55. The requirement for a statement of the maximum fine is to take effect on October 1, 2010.

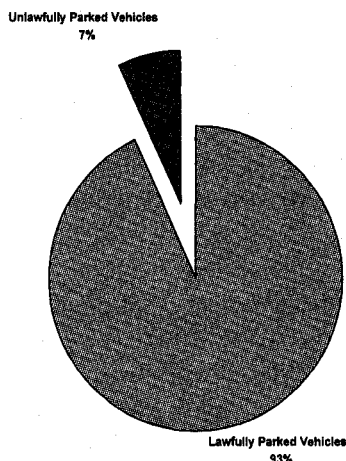
60. *Id.*



From time to time, non-disabled drivers park their vehicles in disabled parking spaces. The reasons for taking the space of a disabled driver vary, but include insensitivity, lack of knowledge, weather related reasons, a brief stop, plenty of spaces available, parking late at night, and simply by mistake. Whatever the reason, the non-disabled driver must become more aware of the needs of the disabled driver, particularly the need to park in an accessible parking space. Fortunately, while conducting the survey, only seven percent of vehicles were illegally parked in accessible parking spaces.⁶¹

61. *Id.* question 21, at 55.

Total Percentage of Vehicles Parked in Accessible Spaces in Lots Surveyed:
Question 21



The difficulty of police enforcement of illegal parking in accessible parking spaces often stems from the occurrences of the violation lasting but a few minutes. There is not enough time for the police to be called, dispatched, and present at the time of the parking infraction. It is no surprise that an option for the disgruntled disabled driver is to resort to private action, taking the air out of the tire of the parking space bandit.

IV. STATE MOTOR VEHICLE LAWS—A FIVE STATE COMPARISON

In 2000, the U.S. Census Bureau reported 49.7 million people with a disability or long lasting condition.⁶² These figures represented 19.3% of the civilian non-institutionalized population who were age five or older.⁶³ The

62. UNITED STATES CENSUS BUREAU, DISABILITY STATUS: 2000, <http://www.census.gov/prod/2003pubs/c2kbr-17.pdf>.

63. *Id.* The census data reveals that for the population sixty-five and over, 41.9% are persons with a disability. *Id.*

2000 Census found 9.3 million Americans with a sensory disability involving sight or hearing, 21.2 million with a condition limiting physical activities such as walking, and 18.2 million ages sixteen and older with difficulty going outside of the house.⁶⁴

State motor vehicle laws were reviewed and analyzed for comparison in five states, Maryland, Florida, California, Texas, and Illinois, with a total population of 80,538,137 ages five or older. Issues ranged from who is eligible for transportation related accommodations, who certifies the disability, the length of validation to acquire parking accommodations, the use of placards and disability license plates, and requirements related to accessible parking spaces for disabled drivers. In addition, these five state laws were compared in the areas of signage and law enforcement for violations of accessible parking spaces. Recommendations will be offered in various areas of disabled parking.

The eligibility criteria for persons with disabilities to receive parking accommodations are similar among the five states. Mobility of the person with a disability is crucial; Maryland requires that the person cannot walk 200 feet without stopping to rest.⁶⁵ Another common condition providing for eligibility involves lung disease. Florida requires that the "person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60mm/hg on room air at rest."⁶⁶ Cardiovascular disease is commonly found in the enumerated covered disabilities, provided it is classified in severity as Class III or IV according to the American Heart Association Standards.⁶⁷ The other common description involves vision impairment, which is a central visual acuity of 20/200 or greater with corrective lenses.⁶⁸

64. *Id.* The census data reports that males with a disability is 19.6%, females with a disability at a rate of 19.1%. African Americans with a disability, five and older, comprise 24.3% of the disabled population. *Id.*

65. MD. CODE ANN., TRANSP. § 13-616(b)(1)(iii) (2006). Other states with the 200 feet delineation are Texas and Illinois. TEX. TRANSP. CODE § 681.001(5)(A) (2006); ILL. VEH. CODE § 625 ILCS 5/1-159.1(6) (2006).

66. FLA. STAT. § 320.0848(1)(b)(1)(c) (2006). Maryland, California, Texas and Illinois have similar descriptions. MD. CODE ANN., TRANSP. § 13-616(b)(1)(i); CAL. VEH. CODE § 295.5(c)(2) (2006); TEX. TRANSP. CODE § 681.001(5)(D); ILL. VEH. CODE § 625 ILCS 5/1-159.1(2).

67. All five states have the American Heart Association Standards. FLA. STAT. § 320.0848(1)(b)(1)(e); MD. TRANSPORTATION CODE ANN. § 13-616(b)(1)(ii); CAL. VEH. CODE § 295.5(d); TEX. TRANSP. CODE § 681.001(5)(F); ILL. VEH. CODE § 625 ILCS 5/1-159.1(4).

68. MD. CODE ANN., TRANSP. § 13-616(b)(1)(viii)(1); CAL. VEH. CODE § 295.5(b).

In all five states, a licensed physician certifies that a person is entitled to a disability designation.⁶⁹ The length of validation of a physician's certification often ranges from six months for a temporary disability to no limitation for permanent disabilities.⁷⁰ There appears to be no reason for a driver with a permanent disability as recognized by a licensed physician to seek annual recertification, which is costly and time consuming for the disabled driver.

The types of placards displayed in vehicles of disabled drivers and passengers are either temporary or permanent⁷¹ and must hang on the rearview mirror of the vehicle used to transport the disabled person.⁷² Often, disability labeled license plates are provided to the disabled driver or owner of the vehicle. An applicant for the disability plates must be a resident of the state and have a permanent disability certified by a physician.⁷³

The parking space designated for the disabled driver is precisely described by the ADAAG.⁷⁴ For cars, the standard accessible space is eight feet wide with a five foot access aisle⁷⁵ and for a van accessible space, the size is eight feet wide with an eight foot access aisle.⁷⁶ The state motor vehicle and transportation laws also cover parking space size requirements, modeled after the ADAAG. For example, the width requirements of Maryland and Texas⁷⁷ are identical to the ADAAG, while California provides a nine feet wide with a five foot aisle for cars and nine feet wide and an eight foot aisle.⁷⁸ At present, van accessible space requirements vary from either one in every eight

69. FLA. STAT. § 320.0848(1)(b)(2); MD. TRANSPORTATION CODE ANN. § 13-616(b)(1); CAL. VEH. CODE § 295.5(a); TEX. TRANSP. CODE § 681.001(5)(I); ILL. VEH. CODE § 625 ILCS 5/1-159.1. Also included physician assistant or advanced practice nurse. *Id.*

70. FLA. STAT. §§ 320.0848(1)(d), (3)(b). Certification automatically renews for permanent disabilities. *Id.*

71. The Texas Transportation Code provides for temporary and permanent, delineations blue for mobility impaired, red for non-mobility impaired. TEX. TRANSP. CODE § 681.002(b)(1). Temporary placards are often limited to six months in duration. Permanent placards often require re-issue every four years. An additional requirement for permanent placards should include turning in the placard within 30 days after death of disabled person, thus limiting fraudulent use.

72. Placard must be visible from front of vehicle. FLA. STAT. §§ 320.0848(2)(a).

73. MD. CODE ANN., TRANSP. § 13-616.1(a). In Illinois, disability plates are issued to a qualified disabled driver or parent or legal guardian who depends on the parent or legal guardian frequently for transportation. ILL. VEH. CODE § 625 ILCS 5/3-616(b).

74. 28 C.F.R. § 36.304 (covering architectural accessibility and barrier removal).

75. UNITED STATES ACCESS BOARD, TECHNICAL BULLETIN: PARKING, Fig. 9 Dimensions of Parking Spaces, <http://www.access-board.gov/Adaag/about/bulletins/parking.htm>.

76. *Id.*

77. MD. CODE REGS. § 05.02.02.07(B)(3)(a); TEXAS ACCESSIBILITY STANDARDS § 4.6.2.

78. CAL. BUILDING CODE § 1129B.4.1 (2001).

accessible spaces⁷⁹ to one in every four spaces;⁸⁰ however, Florida provides no distinction between standard and van space requirements.⁸¹ It is recommended that all accessible parking spaces be eight feet wide with an eight foot access aisle, allowing both cars and vans access to the space.

Another common issue the state motor vehicle laws address is the waiver of the meter fee for a disabled driver. While parking meters are often limited in time to two hours, a disabled driver in Maryland and Florida can park one's car at a meter without paying the fee for twice the time limit, not exceeding four hours.⁸² California and Texas impose no fee or maximum time limit for a disabled person to park at a parking meter.⁸³ Nonetheless, state laws prohibit disabled drivers from parking in no parking zones.⁸⁴

Signage designating accessible parking is of utmost importance. The ADAAG require a sign with the international symbol of access mounted high enough to be seen when a vehicle is parking in the space.⁸⁵ Maryland requires signs to be located in front of the space, flushed against a building or between six to ten feet high.⁸⁶ Florida and California require each accessible space to be prominently outlined in blue paint.⁸⁷ All accessible spaces should be designated by paint on the parking space and vertical signs high enough to be seen by drivers. In addition, to deter non-disabled drivers from occupying disabled spaces illegally, the signage should include the fine for illegal parking and the international symbol of accessibility.

In order to enforce accessible parking laws, police must have the authority to write citations for violations. Parking enforcement specialists, as are provided in Florida and California, can assist local police in writing citations.⁸⁸ The maximum penalties for such violations vary among states. Illinois limits the fine to \$250.00,⁸⁹ while Florida, California, and Texas

79. CAL. CODE REGS. tit. 24.

80. *See, e.g.*, MD. CODE REGS. § 05.02.02.07 (2007), available at <http://www.dsd.state.md.us/comar/05/05.02.02.07.htm> (the code of Maryland Regulations or "COMAR" are regulations which are authorized by the Maryland legislature to implement the state statutes).

81. *See, e.g.*, FLA. STAT. § 553.5041 (West 2007).

82. MD. CODE ANN., TRANSP. § 13-616(f)(2)(ii)(1).

83. CAL. VEH. CODE § 22511.5(a)(2); TEX. TRANSP. CODE § 681.006(b).

84. MD. CODE ANN., TRANSP. § 13-616(f)(3) (also restricting parking during heavy traffic rush hour periods or where parking would cause a traffic hazard).

85. STATES ACCESS BOARD, ADA ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES § 4.6.4, <http://www.access-board.gov/adaag/html/adaag.htm>.

86. *See, e.g.*, MD CODE REGS. § 05.02.02.07 (2007), available at <http://www.dsd.state.md.us/comar/05/05.02.02.07.htm>.

87. FLA. STAT. ANN. § 553.5041(6) (West 2007); CAL. VEH. CODE § 22511.7.

88. *Id.*

89. *See* 625 ILCS 5/11-208.3 (West 2007).

impose maximum fines of \$1000.00.⁹⁰ The higher the fine, the greater likelihood sufficient spaces will remain for the disabled driver.

With the significant number of disabled drivers searching for accessible parking spaces, the police must have the authority to ticket violators. Disabled drivers seeking accessible parking at shopping areas, places of employment, and at home are significant. In Maryland, there are 370,001 permanent placards issued,⁹¹ and there are 82,502 active motor vehicle registrations (plates).⁹² Accordingly, police should be permitted to regulate parking, impound vehicles parked in violation of disability designation, tow vehicles from publicly and privately owned parking lots, and issue citations for violations. The challenge for police enforcement often involves the ability of law enforcement officers to enter private parking lots used by the public. Many places of public accommodations,⁹³ including places of lodging, shopping centers, and health care providers are particular locations that require close and careful police monitoring to limit non-disabled drivers occupying parking spaces reserved for the individual with a disability.

V. POLICE AUTHORITY TO REGULATE PARKING

In Maryland, police officers and other individuals so authorized are permitted to regulate parking on both public and privately owned parking lots.⁹⁴ The authority to regulate access to parking for the disabled driver encompasses the parking lots for places of public accommodations. Maryland law also encourages the education of officers, businesses, and the public at large regarding parking regulations, the authorization of law enforcement officers to enter and issue citations for violations of a parking ordinance in privately owned parking lots, and eligibility prerequisites for registration plates and placards for disabled drivers.⁹⁵ Parking, standing, or stopping in a zone designated for disabled individuals, except for the use of a disabled individual, is included in violations for which an officer may issue a citation.⁹⁶ The ability of the police to monitor and enforce parking regulations is essential in order for the disabled driver to access places of public accommodations.

90. FLA. STAT. §§ 320.0848(5); CAL. VEH. CODE § 4461(b); TEX. TRANSP. CODE § 681.0101(j)(1).

91. Maryland Motor Vehicle Administration response to Freedom of Information request, April 6, 2006, Sandra L. Dalton, Operations Research (on file with author).

92. *Id.*

93. See 42 U.S.C. § 12101(a)(3) (2006); 28 C.F.R. § 36.104.

94. MD. CODE ANN., TRANSP. §§ 26-301(b)(3), (e)(1).

95. *Id.* at § 26-301(e).

96. *Id.* at § 21-1003(u).

A licensed physician, optometrist, or podiatrist must verify that an applicant for a disability registration number and registration plates or placards meets the requirements provided in Maryland law.⁹⁷ Physical impairments warranting disability registration and plates or placards include lung disease, cardiovascular disease, inability to walk 200 feet without resting, inability to walk without the use of an assistive apparatus, use of a wheelchair, loss of a limb, visual impairments, as well as other conditions that impair the ambulatory function of the applicant.⁹⁸ Maryland law permits disabled drivers to park at a parking meter without paying the required fee for twice the maximum time allowed by the meter, not exceeding four hours.⁹⁹ If the meter allows parking for greater than four hours, the disabled driver may park there for the time permitted by the meter.¹⁰⁰ However, Maryland law prohibits disabled drivers from ever parking in no-parking zones, zones designated for specific vehicles, or where local ordinances otherwise restrict parking.¹⁰¹ Upon request of a police officer or other person so authorized, a driver must present identification as proof that the parking privileges are being used by a disabled individual.¹⁰² Violations of Maryland law regarding parking for disabled drivers, including fraud and misrepresentation, are misdemeanors.¹⁰³ All the parking provisions for an individual with a disability are designed to provide meaningful access to places of public accommodations. The ADA opens the door to the disabled and provides space in which to park ones vehicle in a safe and accessible location.

VI. MARYLAND'S TASK FORCE ON PARKING FOR INDIVIDUALS WITH DISABILITIES¹⁰⁴

The Maryland General Assembly recognized the challenges and obstacles facing drivers with disabilities and established the Task Force on Parking for Individuals with Disabilities.¹⁰⁵ The Legislature directed the Task Force to study current laws on parking privileges for persons with disabilities and to make recommendations for regulations related to the use of disabled parking

97. *Id.* at § 13-616(b)(1).

98. *Id.*

99. MD. CODE ANN., TRANSP. §13-616(f)(2)(ii)(1.).

100. *Id.* at § 13-616(f)(2)(ii)(2.).

101. *Id.* at § 13-616(f)(3).

102. *Id.* at §§ 13-616(g).

103. *Id.* at §§ 13-616(k), 27-101(a).

104. S. 368, 2004 Leg., 418th Sess. (Md. 2004).

105. *See id.*

placards and license plates.¹⁰⁶ The Task Force, comprised of citizen members, heard from experts who testified on engineering and accessibility codes, as well as on medical and enforcement issues.¹⁰⁷ The Task Force ultimately made recommendations to enhance and improve disabled parking accessibility issues. As a result of the proceedings, the Task Force made five recommendations that tighten the eligibility requirements for individuals applying for disabled parking privileges, two that strengthen the enforcement of the disabled parking privilege, and one dealing with disabled parking accessibility issues.¹⁰⁸ The Task Force also encouraged the enhancement of public awareness and education to make Marylanders more aware of disability parking laws.¹⁰⁹

The Task Force recognized the challenges of enforcing the disabled parking privilege. "Three layers of requirements, federal, state and local, complicate the enforcement of the disabled parking laws."¹¹⁰ The Task Force also heard the challenges in determining whether the driver of the vehicle was entitled to disability parking privileges.¹¹¹ Additionally, law enforcement was in need of guidance regarding the issuance of citations for parking violations on private property.¹¹² The Task Force addressed various issues in need of clarification, such as the procedure for the non-disabled driver who transports a disabled person.¹¹³ Because federal and state definitions vary, the description of who is entitled to the disabled parking privilege requires clarification.¹¹⁴

VII. RECOMMENDATIONS OF THE TASK FORCE AND LEGISLATIVE ACTION

A. First Recommendation

The "current eligibility criteria for disabled parking privileges are too broad."¹¹⁵ "The Task Force recommend[ed] that eligibility for permanent

106. *Id.*, at page 3.

107. *Id.*, at page 1. The Task Force was also comprised of legislators, representatives of states agencies, private associations. *Id.*

108. TASK FORCE, *supra* note 40, at 3.

109. *Id.* at 7.

110. *Id.* In addition, counties and municipalities have enacted local ordinances, accounting for the variety of fines and enforcement activities around the state. *Id.*

111. *Id.*

112. TASK FORCE, *supra* note 40, at 7.

113. *Id.* "The MVA estimates that roughly 30,000 of approximately 89,000 disabled parking plates currently on Maryland vehicles are issued to transporters." *Id.*

114. *Id.* Maryland's regulations, which allow certain physical ailments such as blindness, are broader and more inclusive than federal regulations, which require a person's mobility or conditions affecting ambulatory ability to be the determinative factors. *Id.*

115. TASK FORCE, *supra* note 40, at 8.

disability placards and plates under the 'hardship/risk of injury' provisions . . . be restricted to those applicants whose permanent disability adversely impacts the applicant's ambulatory ability."¹¹⁶

In response to this recommendation on eligibility criteria, the Maryland Legislature required that the permanent disability of an applicant for special disability registration plates must "adversely impact[] the ambulatory ability of the applicant and [be] so severe that the person would endure a hardship or be subject to a risk of injury if the privileges accorded a person for whom a vehicle is specially registered . . . were denied."¹¹⁷

B. Second Recommendation

"The Task Force recommend[ed] that the total number of permanent disability placards and plates an individual can receive be limited to: (i) one set of plates and one (1) placard or (ii) two placards if the individual does not request a disability plate."¹¹⁸

The Maryland General Assembly followed these recommendations, limiting the issuance of one placard and one set of special registration plates or two placards and no special registration plates.¹¹⁹ This is a reasonable restriction because "Maryland law requires that the disabled parking placard be used only if the qualified placard holder is in the vehicle. . . ."¹²⁰ This restriction will cut down on abuse by the non-disabled driver who uses a vehicle with disabled designation that is not occupied by the disabled person.¹²¹

C. Third Recommendation

"The Task Force recommend[ed] that disabled parking plates . . . be limited to disabled applicants who are either owners or co-owners of the vehicle."¹²² The Maryland General Assembly acknowledged "that of the approximately 89,000 currently issued disabled parking plates, an estimated

116. *Id.*

117. MD. CODE ANN., TRANSP. §13-616(b)(1)(ix) (West 2006).

118. TASK FORCE, *supra* note 40, at 9. The Task Force was concerned that "the additional placards presented a significant potential for abuse." *Id.* The MVA found "there [were] currently outstanding approximately 336,000 disabled parking placards for approximately 250,000 disabled parking privilege holders." *Id.*

119. MD. CODE ANN., TRANSP. §13-616(c)(1)(i)(ii).

120. TASK FORCE, *supra* note 40, at 9.

121. *Id.*

122. *Id.* at 10.

30,000 of [those] plates are issued to non-disabled transporters.”¹²³ To better regulate the distribution of disabled parking plates and reduce abuse, the Maryland Legislature mandated that only the owner of a vehicle may apply for special disability registration plates.¹²⁴

D. Fourth Recommendation

“The Task Force recommend[ed] that the General Assembly clarify that an applicant for a disabled parking placard or license plates must be a Maryland resident.”¹²⁵ Following the Task Force recommendation, the Maryland law restricted persons applying for a parking placard to residents of Maryland.¹²⁶ This residency requirement for the issuance of parking placards and disabled parking license plates prevents “‘forum shopping’ by out-of-state applicants who may not be eligible for placards under the standards of their home jurisdiction. . . .”¹²⁷

E. Fifth Recommendation

“The Task Force recommend[ed] that Maryland’s current requirement that a physician recertify an individual with permanent disabilities every four years be eliminated. . . .”¹²⁸ For those persons with permanent disabilities, the burdensome requirement of obtaining physician recertification was seen as unnecessary. The Maryland General Assembly incorporated this recommendation by permitting a renewal of the placard every four years with simply an application form approved by the Motor Vehicle Administration.¹²⁹ This eliminated the physician recertification, saving permanently disabled individuals expenses and time.

123. *Id.* “[O]rganizations such as nursing homes that transport the disabled [may] have facilities plates that provide disabled parking privileges.” *Id.*

124. MD. CODE ANN., TRANSP. §13-616(b)(1) (West 2006).

125. TASK FORCE, *supra* note 40, at 10. Federal regulatory scheme anticipates each state to issue disabled parking plates and placards to state residents only and require each state to recognize plates and placards issued by other states. *Id.*

126. MD. CODE ANN., TRANSP. §13-616.1(a)(1) (West 2006).

127. TASK FORCE, *supra* note 40, at 11.

128. *Id.* “[O]nce certified as permanently disabled, [individuals] would no longer be required to obtain a physician’s recertification.” *Id.*

129. MD. CODE ANN., TRANSP. §13-616.1(d) (West 2006).

F. Sixth Recommendation

"[E]nact[ing] and implement[ing] . . . expanded disabled parking enforcement efforts through alternative means such as the use of authorized auxiliary personnel, private security and volunteer groups."¹³⁰ Maryland law encourages local jurisdictions to provide alternative enforcement initiatives for disabled parking infractions.¹³¹

G. Seventh Recommendation

The Task Force "[E]ncourag[ed] and support[ed] public outreach efforts to educate law enforcement, businesses, medical practitioners and the general public as to the State law requirements for disabled parking. . . ."¹³² The public awareness campaign is necessary to educate the community on enforcement, eligibility criteria for disabled parking plates and placards, and "[t]he requirement that the disabled person must be in the vehicle either as a driver or passenger in order for the vehicle to be entitled to park in a disabled parking spot. . . ."¹³³ Maryland law's public outreach provisions announce the importance of the education of the non-disabled as well as the disabled drivers.¹³⁴

The Task Force on Parking for Individuals with Disabilities was highly successful in opening a dialogue among community interest groups, identifying specific challenges facing the disabled driver, and educating the community at large. The Task Force's announcement of the importance of regulating and enforcing disabled parking laws in a fair and equitable way was clearly accomplished by the Task Force. The swift and appropriate actions of the Maryland General Assembly in enacting the Task Force recommendations are a testament to the success of the Task Force on Parking for Individuals with Disabilities. Other states that address the needs of disabled drivers should follow the course taken by Maryland.

130. TASK FORCE, *supra* note 40, at 14. The concern of enforcement is seen especially in smaller local jurisdictions with more budgetary constraints. *Id.*

131. MD. CODE ANN., TRANSP. §26-301(a) (West 2006) (permits any political subdivision to issue citations by authorized individuals).

132. TASK FORCE, *supra* note 40, at 15.

133. *Id.* Additionally, the disabled person is required to possess an MVA-issued certification card.

134. MD. CODE ANN., TRANSP. §26-301(e) (West 2006). Efforts include educating the public about parking laws, including "the authority of law enforcement officers to enter private parking lots used by the public," and the eligibility criteria for requirements for individuals with disabilities using special plates and placards. *Id.*

In several states, an additional fee was imposed on disabled drivers who receive removable windshield placards needed to access parking spaces reserved for disabled individuals. In *Duprey v. Connecticut*, an individual with a limitation in the major life activity of walking challenged an additional \$5.00 application surcharge for placards.¹³⁵ The court rejected the Connecticut surcharge fee, asserting a violation of the ADA's prohibition on discriminatory surcharges.¹³⁶

The court in *Thrope v. Ohio* reached a similar result, holding that a \$5.00 fee for a placard violated the ADA.¹³⁷ According to the court, public entities may not pass on the costs of compliance within the ADA to disabled individuals "as a condition for the enjoyment of ADA-mandated measures."¹³⁸ Reserved parking for disabled persons, free of surcharges, was the court's acknowledgement of a much bigger issue: "flexibility and control over one's life that allows for economic and personal self-sufficiency," as well as a "greater level of participation in public life."¹³⁹

VIII. PHYSICIAN DUTY TO NOTIFY MOTOR VEHICLE ADMINISTRATION AND PATIENT

When a person with a disability considers driving a motor vehicle, the issue of safety is foremost in one's mind. The importance of self-sufficiency for the disabled individual is significantly compromised when a physician advises against driving due to safety concerns. The legal consequences of failing to warn a driver of potential risks due to a medical condition can be monumental. The risk to both the disabled driver and the community at large are to be pondered when a physician is faced with the issue of whether to advise a patient with a disability to cease driving.

Advising a disabled person not to drive has adverse implications for employment, leisure activity, and overall interaction within the community. A physician is often forced to decide whether to advise a patient against

135. *Duprey v. Connecticut*, 28 F. Supp. 2d 702 (D. Conn. 1998) (holding \$5.00 application fee for placards was a surcharge because it exceeded the amount generally paid by all those using parking spaces).

136. *Id.* at 710 (citing 28 C.F.R. § 35.130(f) (1996)).

137. *Thrope v. Ohio*, 19 F. Supp. 2d 816 (S.D. Ohio 1998) (holding ADA prohibits state from charging disabled persons to pay a user fee to cover costs of ADA-mandated accommodations).

138. *Id.* at 825. See also *Dare v. California*, No. CV96 – 5569 JSL, 1997 U.S. Dist. LEXIS 23158, at *2, (C.D. Cal. May 30, 1997) (holding \$6.00 fee for placards that permit the use of parking spaces reserved for persons with disabilities violates the ADA).

139. *Dare*, 1997 U.S. Dist. LEXIS 23158, at *10. See generally *Brown v. North Carolina Dept. Motor Vehicles*, 166 F.3d 698 (4th Cir. 1999) (11th Amendment issues presented in placard surcharge cases); see also *Neinast v. Texas*, 217 F.3d 275 (5th Cir. 2000).

driving and whether to notify the Department of Motor Vehicles that a current driver's privilege should be revoked. This additional step of notifying the motor vehicle administration often puts the physician in a no-win situation.

A physician with the legal duty to report a patient's medical condition to a government agency creates an atmosphere where truth and confidence are chilled. The physician treating a person with a disability aims to improve the health of the patient. An important factor in this relationship is the level of trust and confidence the patient places in the physician. The duty of confidence is at risk when a patient fears his privacy and trust may be compromised by the physician. This severely tests physicians treating disabled patients by forcing them to weigh the privacy concerns of his or her patient against the safety concerns of the community at large.

In *Medina v. Pillemer*, the court confronted the issue of a physician's duty to warn both the patient and third parties after a driver with a malignant tumor and a history of seizures caused an automobile accident, severely injuring a third party.¹⁴⁰ The court recognized the risks of severe injury or death in a motor vehicle accident to the driving public as well as to the disabled driver if the disabled driver were to suffer a seizure while driving.¹⁴¹ The neurologist treating the disabled driver "was in the best position," according to the court, "to have known of the potentially dangerous condition and to have taken reasonable steps to avert that risk."¹⁴²

The importance of advising the patient of the risks of driving and instructing him or her not to drive were the thrust of the opinion. Unlike the duty to warn third parties when a psychiatrist is treating a mentally ill patient with homicidal tendencies, the duty here was more limited in advising the patient with seizures and a brain tumor to stop driving.¹⁴³ The court placed the responsibility of notifying the Registry of Motor Vehicles on the person unfit to drive, not the physician. The court acknowledged that common law does not require the physician to report a driver with seizures to the Registry of Motor Vehicles.¹⁴⁴ Such a requirement may jeopardize the doctor-patient relationship, "discourag[ing] patients from disclosing sensitive medical information to their doctors. . . ."¹⁴⁵ While the physician has a duty to warn the

140. *Medina v. Pillemer*, No. 04-0290-H, 2005 WL 3627226 (Mass. Super. Ct. Dec. 23, 2005).

141. *Id.* at *7.

142. *Id.* at *8.

143. *Id.*; see also *Duvall v. Goldin*, 362 N.W.2d 275 (Mich. Ct. App. 1984) (court looked at policy considerations and foreseeability when determining if there was a duty to warn patient not to drive, leaving questions of fact to the jury).

144. *Medina*, 2005 WL 3627226, at *9.

145. *Id.*, at *9.

disabled patient not to drive, that duty is not extended to third parties.¹⁴⁶ The balance of safety to the patient and third parties and the respect for the physician-patient relationship led the court to require physicians to advise patients with seizures not to drive.¹⁴⁷

The duty to warn patients of known dangers associated with taking a prescription medication was extended to the public in *Robinson v. Health Midwest Development Group*.¹⁴⁸ The patient was administered prescription drugs that were known to cause drowsiness and dizziness.¹⁴⁹ The court's analysis of the duty to warn patients and extending such a duty to the general public were centered on public policy factors as found in the case of *Millard v. Corrado*.¹⁵⁰ The court clearly articulated the factors to consider in determining whether public policy favors extending the duty of a physician to warn a patient of the risks associated with prescription drugs and driving a motor vehicle to the general public.¹⁵¹ The *Millard* court, relying on the Missouri Supreme Court's decision in *Hoover's Dairy, Inc. v. Mid-America Dairymen, Inc.*, announced the following factors for consideration:

(1) the social consensus that the interest is worth protecting, (2) the foreseeability of harm and the degree of certainty that the protected person suffered the injury, (3) the moral blame society attaches to the conduct, (4) the prevention of future harm, (5) the consideration of cost and ability to spread the risk of loss, and (6) the economic burden upon the actor and the community.¹⁵²

146. *Id.*

147. *Id.* at *14.

148. *Robinson v. Health Midwest Development Group*, No. WD 58290, 2001 Mo. App. LEXIS 353 (W.D. Mo. Ct. App. Mar. 6, 2001) (reversed by Missouri Supreme Court on other grounds, 58 S.W.3d 519 (Mo. 2001)). It is important to note that the procedural posture behind this case is that the Court of Appeals was hearing the case on appeal from a grant of summary judgment. The Court of Appeals did not actually hold that there was a duty, only that a trier of fact *could* find that such a duty existed. The Court of Appeals was later reversed by the Supreme Court of Missouri for the reason that the statute of limitations for medical negligence applied to the case, rather than for actions brought for general negligence. The statute of limitations for medical negligence was two years, as opposed to the five year statute of limitations for actions brought under general negligence. The Supreme Court of Missouri never reached the merits of the case. *Robinson v. Health Midwest Development Group*, 58 S.W. 3d 519 (Mo. 2001).

149. *Robinson*, 2001 Mo. App. LEXIS 353, at *1. The patient-driver "crossed the center line of the roadway, and collided head on with appellant's vehicle, causing her injury." *Id.*

150. *Millard v. Corrado*, 14 S.W.3d 42 (Ct. App. 2000).

151. *Id.* at 47.

152. *Id.* (citing *Hoover's Dairy, Inc. v. Mid-America Dairymen, Inc.*, 700 S.W.2d 426, 432 (Mo. 1985) (en banc)).

In weighing the above factors, the court in *Robinson* found there could be a duty to the general public by a physician to warn a patient as to the known dangers associated with taking a prescribed drug.¹⁵³

In *Trott v. Patterson*, the court heard a claim in which a patient blacked out behind the wheel and killed an individual.¹⁵⁴ The physician treating a patient with a head injury told him he could drive despite unpredictable reactions to medications administered for pain.¹⁵⁵ The physician was found to be in violation of a state statute, since revised, which mandated a physician report to the state health department "the name, age and address of each person known to him to be subject to recurrent attacks of epilepsy . . . or . . . recurrent periods of unconsciousness uncontrolled by medical treatment."¹⁵⁶ A violation of this statutory duty to report "may [have] give[n] a third-party member of the driving public a cause of action against [the] physician who fail[ed] to use reasonable care to protect the driving public. . . ."¹⁵⁷ Such a violation was viewed as negligence *per se*.¹⁵⁸

One of the earlier decisions placing a duty to the driving public on physicians is *Gooden v. Tips*.¹⁵⁹ The physician treated a patient for depression and drug abuse and prescribed medication. However, the physician "fail[ed] to warn [the patient] not to drive an automobile while under the influence of [the] drugs. . . ."¹⁶⁰ The court ruled that "a physician can owe a duty to use reasonable care to protect the driving public where the physician's negligence in diagnosis or treatment of his patient contributes to plaintiff's injuries."¹⁶¹ The *Gooden* court acknowledged that physician may have a duty to warn the patient not to drive, but not the more significant duty to prevent the patient from driving.¹⁶²

153. *Robinson*, 2001 Mo. App. LEXIS 353, at *40-41.

154. 52 *Trott v. Patterson*, No. 64373, 1993 Conn. Super. LEXIS 388, at *1-2 (Conn. Super. Ct. Feb. 9, 1993).

155. *Id.* at *2.

156. *Id.* at *3-4 (stating that reporting was kept confidential) (quoting CONN. GEN. STAT. § 14-46 (1979)). In July of 1990, the statute was amended to make the physician's duty to report permissive instead of mandatory by replacing the words "shall report" with "may report." 1990 Conn. Legis. Serv. P.A. 90-265 (West).

157. *Trott*, 1993 Conn. Super. LEXIS 388, at *5.

158. *Id.*

159. *Gooden v. Tips*, 651 S.W.2d 364 (Tex. Ct. App. 1983).

160. *Id.* at 365.

161. *Id.* at 369.

162. *Id.* at 370 (no duty on physician "to control the conduct of [the] patient"); *See also* Wilschinsky v. Medina, 775 P.2d 713, 717 (N.M. 1989) (physician had a duty to the driving public when he administered drugs to his patient with side-effects "known to affect judgment and driving ability"); *Myers v. Quesenberry*, 144 Cal. App. 3d 888, 893 (1983) ("where warning the [patient] is a reasonable step to take in the exercise of the standard of care applicable to physicians, liability is not conditioned on potential victims being readily identifiable as well as foreseeable").

In contrast to several courts that do impose a duty to warn on a treating physician, the court in *Kolbe v. Iowa* reached the opposite result.¹⁶³ A bicyclist who was struck and severely injured by a disabled driver with vision impairment brought suit against the driver and treating physician.¹⁶⁴ The court focused on the reasonable foreseeability of injury in addressing the issue of whether a physician had a duty to protect the bicyclist and public at large from any danger posed by the driver.¹⁶⁵ The court, in refusing to impose a duty on physicians, focused on the importance of physicians being able to fulfill their duty to patients. The court reasoned that physicians should be able to treat patients without the fear of third party liability claims for acts of patients over which physicians have no control.¹⁶⁶ Furthermore, the *Kolbe* court asserted that it is of utmost importance that the physician's first loyalty and duty to his or her patient is not compromised.¹⁶⁷ The court was concerned that imposing liability on physicians for their patient's driving would create an atmosphere in which doctors would be overly restrictive concerning their patient's activities and would not act in their patient's best interest.¹⁶⁸ The *Kolbe* court was particularly alarmed by the potential chilling effect on a physician's willingness to ever recommend driving when an unlimited potential for liability exists.¹⁶⁹

Even where a state requires a physician to report a patient with epilepsy, state courts have refused to impose liability on physicians for failure to report. In *Harden v. Allstate Insurance Company*, a physician failed to report a patient with epilepsy to the Delaware Division of Motor Vehicles.¹⁷⁰ The court found the state statute requiring physicians to notify the Division of Motor Vehicles was designed to enforce the licensing procedure process.¹⁷¹ However, the

163. *Kolbe v. Iowa*, 661 N.W.2d 142 (Ia. 2003).

164. *Id.* at 145.

165. *Id.* at 150.

166. *Id.* at 149. The court unwilling to intrude into the physician and patient relationship.

167. *Id.*; see also *Withhoeft v. Kiskaddon*, 733A.2d 623 (Pa. 1999). There is no duty on a physician to report a patient with vision impairment to the Department of Transportation.

168. *Kolbe*, 661 N.W.2d at 149; see also *Praesil v. Johnson*, 967 S.W.2d 391 (Tx. 1998). Although the state statute permits physicians to inform state of the identity of the patient with epilepsy for possible revocation of driver's license, there is no imposition of negligence per se for physician failure to report.

169. *Kolbe*, 661 N.W.2d at 149. The imposition of liability would create divided loyalty between the welfare of patients to whom they have a primary responsibility, and the welfare of the unknown public; see also *Werner v. Vanner, Stafford, & Seaman*, 659 So. 2d 1308 (Fla. Ct. App. 4th Dist. 1995). Under Florida law, there is no duty on doctors to warn patients not to drive.

170. *Harden v. Allstate Insurance Co.*, 883 F. Supp. 963 (D. Del. 1995). Driver crossed center lane of street, striking his vehicle into oncoming vehicle, killing driver, his wife and son; see also *Hospodar v. Schick*, No. 971 WDA 2003, 885 A.2d 986 (Pa. Super. Nov. 23, 2005). There is no duty to report.

171. *Harden*, 883 F. Supp. at 969-70. Statute of reporting was enacted not for the safety of others, but for enforcing motor vehicle laws.

court found no liability per se on the part of the physician for failing to notify the DMV.¹⁷²

The liability of physicians who fail to warn their patients of the risks of driving motor vehicles and the safety concerns of the community at large raise the question for state legislators. Several states are undertaking this quest to address what responsibility physicians should carry in treating disabled persons through legislation.

IX. THE MEDICAL ADVISORY BOARD

Drivers with physical or mental impairments are on the road, many driving safely, some not. In order to monitor and impose driving restrictions on the impaired driver, state licensing agencies have appointed a Medical Advisory Board ("MAB"). For example, the Maryland MAB was created to define disorders or conditions that could impair an individual's ability to drive, to develop reporting requirements and confidentiality protections, and to oversee the procedures for the safe operation of a motor vehicle.¹⁷³

A MAB oversees the licensing application procedure for the driver with medical or functional impairments. Examples of medical conditions reviewed by a MAB that may impact one's ability to drive a motor vehicle safely include lapse in consciousness,¹⁷⁴ eye disorders, cardiovascular diseases, metabolic disorders, neurological disorders, psychiatric disorders, and alcohol and drug induced conditions.¹⁷⁵

Medical conditions that may impact safe driving are discovered in a number of ways, including self-disclosure during the initial request for a driver's license, police reporting after a motor vehicle accident, physician reporting, and any interested party providing information to the MAB. As a result, a physician is often required to complete a questionnaire to advise the MAB about the safe driving of the patient. States are also requiring a current driver to report any medical condition that is likely to cause loss of consciousness, blackout, seizure, drug or substance dependence or abuse, Parkinson's disease, or dementia.¹⁷⁶

172. *Id.* at 971; *see also* *Thompson v. Davis*, No. CV287-197, 1988 U.S. Dist. LEXIS 3268 (S. Dist. Ga. Mar. 31, 1988). Florida reporting statute is not mandatory, thus not creating tort duty to 3rd party.

173. MD. CODE ANN., TRANSP. § 16-119 (2006).

174. CAL. HEALTH & SAFETY CODE §103900 (2006). The code includes medical conditions that involve marked reduction of alertness or responsiveness to external stimuli, inability to perform activities of daily living such as bathing, dressing, feeding oneself and impairment in sensory motor functions.

175. 37 TEX. ANN. CODE §15.58 (2007). Medical conditions include stroke, convulsive disorders, Parkinson's disorder, sleep apnea.

176. MD. CODE REGS. 11.17.03.02-1(A)(2007).

Five state statutes were reviewed to compare and contrast the approach taken in monitoring and regulating the disabled driver.¹⁷⁷ Issues included physician reporting requirements, driver duty to report medical conditions, confidentiality protections, MAB criteria for review, actions available to the MAB, regarding conditions, restrictions, or revocation of licenses and hearing rights. Recommendations are provided on several specific issues.

All five states have in place a MAB with the role of advising the state motor vehicle administration on medical criteria and vision standards relating to the licensing of drivers, as well as reviewing and consulting on an individual's physical and mental qualifications to safely drive.¹⁷⁸

The requirement of an applicant or licensed driver to self-report a medical condition to the MAB is addressed in Maryland, Texas, and Illinois law. Maryland requires a licensee or applicant for a driver's license to notify the Motor Vehicle Administration of a diagnosis of a variety of medical conditions, including epilepsy, stroke, alcohol or drug dependence or abuse, manic depression, schizophrenia disorders, lapse of consciousness, vision disorder, Parkinson's disease, and dementia.¹⁷⁹ The listing of specific disorders that require disclosure is wise. However, it is recommended that an additional requirement includes disclosure of any mental or physical impairment or condition that will affect one's ability to operate a motor vehicle safely. This functional approach will allow for a balance between the safety concerns of all drivers and the interest in the disabled driver to continue to drive a motor vehicle.

The controversial requirement to mandate physician reporting of a patient driver is a complex issue. Many states provide for a voluntary provision for physician reporting. Florida's reporting provision allows any physician having knowledge of a licensed driver's or applicant's mental or physical disability, which could affect driving ability, to report such knowledge to the Department of Highway Safety and Motor Vehicles.¹⁸⁰ California stands alone in the mandatory physician reporting law for patients diagnosed with medical conditions that are characterized by loss of consciousness.¹⁸¹ In California,

177. States include California, Florida, Illinois, Maryland and Texas.

178. See FLA. ST. ANN. §322.125 (3)(a),(b),(4)(2006); TEX HEALTH & SAFETY CODE § 12.092 (2006); 37 TX ADMIN. CODE § 15.58 (2006); 625 ILCS 5/6-902 (2007); CAL. VEH. CODE § 22511.58 (2007); MD. TRANS. CODE ANN. § 16-118 (2007).

179. MD. CODE REGS. 11.17.03.02-1. Upon application for the renewal of driver's license, the applicant shall answer questions from the Motor Vehicle Administration pertaining to disorders affecting ability to drive.

180. FLA. STAT. ANN. § 322.126 (2) (2006); see also TEX. HEALTH & SAFETY CODE § 12.092(2006). Voluntary provision of physician to report; see also 625 ILL. COMP. STAT. 5/6-911(2007). Illinois' physician's voluntary provision if condition interferes with ability to operate motor vehicle.

181. CAL. HEALTH & SAFETY CODE § 103900(a) (2006). The code mandates physicians and surgeons

disorders characterized by lapses of consciousness include medical conditions that involve marked reduction of alertness or responsiveness to external stimuli, inability to perform one or more activities of daily living, and impairment of sensory motor functions used to operate a motor vehicle.¹⁸²

Although the physician mandatory reporting requirement may prevent some disabled drivers from getting behind the wheel, the mandatory reporting would undermine the physician-patient relationship. It is recommended that the duty to report medical conditions that affect safe driving be a requirement of the applicant and licensed driver and not the physician. The motor vehicle administration will continue to receive referrals and information of potentially unsafe drivers from police, courts, family, friends, other citizens, hospitals, occupational therapists, physical therapists, vision specialists, emergency medical personnel, and other individuals and agencies.¹⁸³

The reporting requirements addressed in state motor vehicle laws often address the issue of confidentiality. Florida provides that reports by physicians and agencies regarding a driver's or applicant's disability shall be confidential.¹⁸⁴ Furthermore, the individuals who report will be provided immunity from civil or criminal action.¹⁸⁵ It is recommended that such reports provided by physicians or other interested parties or agencies be confidential and not disclosed to the public. The subject of the report should, however, have access to the report and it should be allowed into evidence in a judicial review proceeding by court order.¹⁸⁶ Also, anonymous reporting should not be accepted, which casts doubt on its reliability.

In several states' MAB reporting procedures, physicians may voluntarily report a patient's physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle.¹⁸⁷ Such voluntary reporting leads to the patient so reported to be examined or investigated.

The who, what, when, where, and why of physician reporting by state of an impaired person's ability to drive is most revealing. The "who" in reporting includes any physician who diagnoses a physical or mental condition that

to notify the local health officer of all patients at least 14 years of age who has been diagnosed with a disorder characterized by lapses of consciousness.

182. *Id.* § (d). The code includes "Alzheimer's disease . . . and related disorders severe enough to be likely to impair a person's ability to operate a motor vehicle"

183. American Association of Motor Vehicle Administrators, *Summary of Medical Advisory Board Practices in the United States*, June 18, 2003, available at, <http://www.mdsupport.org/drivingsummary.pdf>.

184. FLA. STAT. ANN. § 322.126(3)(2006).

185. *Id.* § (3); see TEX. HEALTH & SAFETY CODE § 12.097 (2006). Confidentiality requirements for reporting; see MD. ANN. CODE, § 16-118(d) (2006).

186. See MD. CODE ANN., TRANSP. § 16-119(d)(1)(ii) (2006).

187. See MONT. CODE ANN. § 37-2-311(1) (2006).

significantly impairs a person's ability to safely operate a motor vehicle is seen in the Montana reporting provisions.¹⁸⁸ Other states expand the reporting provisions to optometrists and psychiatrists in Rhode Island,¹⁸⁹ and psychologists in Arizona and North Carolina.¹⁹⁰ The most inclusive reporting provision is seen in Louisiana, whereby any family member having first-hand knowledge of any condition relating to safe driving may report with the Department of Public Safety.¹⁹¹

The "what" of the reporting provisions generally includes a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle.¹⁹²

The "when" of the reporting scheme is generally upon the physician's report.¹⁹³ The Department of Public Safety sends written notification to the allegedly impaired driver requiring submission to a medical examination.¹⁹⁴ Louisiana requires the medical exam be completed within thirty days.¹⁹⁵

The "where" of the process is generally to the MAB within each state, as is seen in Texas and Rhode Island.¹⁹⁶ The MAB in most states serves as an advisory panel to the division of motor vehicles on the subject of physical and mental fitness standards for licensure to operate a motor vehicle and eligibility standards for disability parking privileges.¹⁹⁷

The "why" of the reporting system is to ensure that all persons, including those individuals with physical or mental disabilities can safely operate a motor vehicle. The safety of all citizens is the overarching responsibility of the state motor vehicle administration. Accordingly, a balance is struck between providing a comprehensive and fair licensing procedure that allows all drivers who can safely operate a motor vehicle to enjoy the opportunity for independence and freedom while limiting unsafe drivers from that same opportunity.

The ability of the division of motor vehicles to re-test individuals with a psychological or physical impairment that adversely impacts one's ability to safely operate a motor vehicle was challenged as discriminatory toward the disabled under the ADA in *Therault v. Flynn*.¹⁹⁸ The driver, an individual

188. *Id.*

189. R.I. GEN. LAWS, § 31-10-44(c) (2007).

190. ARIZ. REV. STAT. § 28-3005 (2007); N.C. GEN. STAT. §20-9.1 (2006).

191. LA. REV. STAT. ANN. § 40:1356(E)(1) (2006).

192. *See* MONT. CODE ANN. § 37-2-311 (2006).

193. *See* LA. REV. STAT. ANN. § 40:1356 (2006).

194. *Id.*

195. *Id.* § (E)(3).

196. *See* TEX. HEALTH & SAFETY CODE § 12.096 (2006); *see also* R.I. GEN. LAWS § 31-10-44 (2007).

197. *See* R.I. GEN. LAWS § 31-10-44 (a) (2007).

198. *Therault v. Flynn*, 162 F.3d 46 (1st Cir. 1998).

who had cerebral palsy and was a wheelchair user, claimed that re-testing for disabled individuals impermissibly placed on him additional burdens simply because of his disability status.¹⁹⁹ In rejecting the discrimination claim, the court articulated that the triggering criteria for re-testing was not limited to conditions of disability, but to any reason to believe an applicant may pose a risk to public safety.²⁰⁰ The court refused to find disabled individuals are singled out for less favorable treatment based only on the fact they are disabled.²⁰¹ The court determined that his "limitation in the use of his hands—not his status as a disabled individual or an individual with cerebral palsy—that made further inquiry into his driving ability reasonable."²⁰² As long as the additional re-testing procedure was required to determine whether a driver remained qualified to drive, as opposed to setting up barriers for participation in a government program, such action is a legitimate basis to ensure safe operation of a motor vehicle.²⁰³

The MAB evaluates and makes recommendations on the driving privileges of drivers with physical or mental impairments that may limit their ability to drive safely. Medical conditions that require review are comprehensively covered in the Texas Medical Advisory Board referral process.²⁰⁴ The criteria for referral for physical conditions include:²⁰⁵

- a. Eye disorders
- b. Cardiovascular disorders
- c. Metabolic disorders
- d. Respiratory conditions
- e. Neurological disorders

Texas' criteria for referral for psychiatric disorders include:²⁰⁶

199. *Id.*

200. *Id.* at 51.

201. *Id.* ADA permits consideration of symptoms or appearance of a disability without activating a burden to defend discrimination.

202. *Id.* The road test requirement was an individual assessment of his safe driving skills permissible within the ADA. *See also* Briggs v. Walker, 88 F. Supp. 2d 1196, 1201 (D. Kan. 2000). Reasonable restrictions may be imposed on drivers to assure safe operation of a motor vehicle.

203. *Theriault*, 162 F.3d at 51; *see also* Bailey v. Anderson, 79 F. Supp. 2d 1254 (D. Kan. 1999). The court permitted an additional driver's instruction program as a result of a driver's vision limitation. The court found no violation of the ADA as the requirement was to promote driver safety.

204. 37 TEX. ADMIN. CODE §15.58(1) (2007).

205. *Id.*

206. *Id.* at (2). The code includes involuntary psychiatric patients committed to a hospital, those with guardians, significant behavioral problems, three alcohol convictions, two accidents while drinking, an active drinking problem in past two years, addiction to drugs affecting driver safety, and active drug problem.

- a. Mental, nervous, or emotional patients
- b. Alcohol-induced problems
- c. Drug-induced problems

In addition, Texas broadly states the “criteria for referral of other conditions or disorders . . . if [applicants are] under the care of a physician, and a qualifying road test confirmed that safe driving ability is considerably affected by the condition.”²⁰⁷

The medical criteria that the MAB considers in recommendations on a driver’s ability to operate a motor vehicle safely are succinctly articulated in the Illinois Vehicle Code.²⁰⁸

1) The Driver must possess the emotional and intellectual ability to operate a motor vehicle.

....

2) The Driver must possess the motor and sensory ability to safely operate a motor vehicle.

....

3) The Driver must have the ability to sustain consciousness throughout the entire interval in which he/she intends to drive.

4) The Driver must be free from severe pain which could cause sudden incapacitation or the inability to control a motor vehicle.

5) The Driver must be able to meet the vision requirements. . . .

6) Driver must not be medicated as to render himself/herself incapable of safely operating a motor vehicle.²⁰⁹

The MAB should use the medical criteria as outlined above plus consideration of the driver’s past driving record. Additionally, consideration of medication or rehabilitative measures that mitigate a driver’s impairment should be reviewed in determining the safety of the individual driver.

Upon consideration and review by the MAB, various disposition options are available. Broad authority to impose restrictions on drivers to assure safe operation of a motor vehicle by the licensee is paramount. According to the California Vehicle Code various disposition alternatives are available for visually impaired drivers.²¹⁰ The Department of Motor Vehicles may order restrictions that include corrective lens, sunrise to sunset driving only, no freeway, area restrictions, additional mirrors, no driving in inclement weather,

207. *Id.* at (3). The code includes an amputation, CP, spina bifida, and tourette syndrome.

208. ILL. ADMIN. CODE tit. 92, § 1030.18 (2007).

209. *Id.* § (b).

210. CAL. VEH. CODE § 12813 (2006).

restricted driving between 10:00 a.m. and 3:00 p.m., no driving on roads with posted signs of 45 m.p.h. or greater, restricted to certain streets, and specific adaptive equipment or prosthesis required. Additional restrictions placed on the disabled driver may include suspension, periodic medical evaluations, road testing, vision and written testing, geographic restrictions, automatic transmission only, power steering, use of hearing aids, and hand control or pedal extension. The MAB should be provided with numerous alternatives as they evaluate a disabled driver's ability to safely take the wheel. License restrictions, periodic evaluations based on individual circumstances with solutions based on a case by case determination is the recommended approach.

The appeal process for the disabled driver whose driving privileges are suspended, restricted, or revoked for medical impairments is provided. Illinois, for example, provides a an opportunity for hearing upon request by any person who has their driver's license restricted or cancelled.²¹¹ The administrative appeal process should include a right to a hearing before an impartial administrative law judge, due process protections that include timely notice of the proceedings, a right to be represented by an attorney, a right to present evidence, a right to cross examine opposing witnesses, and a right to testify on your own behalf. After the conclusion of the administrative proceedings, a driver adversely impacted should be permitted to appeal to court.

X. THE OLDER DRIVER

The public has serious concerns and uneasy feelings about older drivers on the road. With approximately 42% of individuals sixty-five years and over identified as having a disability, the community concerns of injury to others is to be expected.²¹² In 2003, the percentage of persons age sixty-five and older who were licensed drivers was 80%.²¹³ Persons age sixty-five and older are relatively safer drivers, having lower rates of crashes than younger drivers, the lowest percentage of crashes involving alcohol, and the highest rate of seatbelt use of any age group.²¹⁴ However, when compared by crashes per mile driven, as opposed to the number of crashes per licensed driver, the data reveals a substantial rise in crash incidence after age seventy.²¹⁵

211. 625 ILL. COMP. STAT. 5/6- 905, 906 (2007). The person under review may be required to submit to a medical exam and make available at the hearing.

212. See U.S. CENSUS BUREAU, *DISABILITY STATUS: 2000*, CENSUS 2000 BRIEF (Mar. 2003).

213. Ari N. Houser, *Older Drivers and Automobile Safety*, AARP PUBLIC POLICY INSTITUTE (Aug. 2005), http://www.aarp.org/research/housing_mobility/transportation/fs51r-drivers.html.

214. *Id.*

215. *Id.*

Medical conditions affecting driving, such as vision, hearing, reaction time, and cognitive motor abilities, may account for the increase in accidents per mile driven by the older driver.²¹⁶ For extremely older drivers, age eighty-five and older, this group saw the second highest rate of fatal crash involvement next to the youngest drivers.²¹⁷ [D]rivers seventy-five and older are about 10 percent more likely than 30-59 year olds to be involved in two-vehicle collisions in which the occupants of the other vehicles suffer non-fatal injuries.²¹⁸

The public outcry about the older driver and safety concerns has led to several responses. The importance of balancing the safety of all drivers and pedestrians with the older driver's desire to continue to drive cannot be overstated. Identifying the unsafe older driver can be accomplished through both physician reporting and mandatory road retesting for senior drivers. "The most practical and economic way for states to identify older drivers who need their driving ability retested . . . is through physician reporting."²¹⁹ An adverse result of physician notification is the potential chilling effect that reporting might have on the confidential physician patient relationship.

Another option for the older driver is mandatory road testing after age seventy-five, the driver license renewal approach, as is in practice in Illinois, New Hampshire, and the District of Columbia.²²⁰ States that require renewal applicants to appear in person and pass a vision test also vary in length of time between renewals, ranging from two to eight years.²²¹

The complicated and politically sensitive issue of license renewal policy requires a federal government response.²²² The increase in elderly drivers and rise in disabilities among older individuals has created an outcry for a measured response to promoting highway safety and respecting an older

216. *Id.*

217. INSURANCE INSTITUTE FOR HIGHWAY SAFETY HIGHWAY LOSS DATA INSTITUTE, *Fatality Facts 2004: Older People*, http://www.iihs.org/research/fatality_facts/pdfs/olderpeople.pdf.

218. INSURANCE INSTITUTE FOR HIGHWAY SAFETY, STATUS REPORT, Mar. 15, 2003, <http://www.iihs.org/sr/pdfs/sr3803.pdf>. But teenage drivers have higher rates of injury to other people. See also *Waschek v. DMV*, 59 Cal. App. 4th 640 (1997) (holding the DMV not liable to third parties injured by a driver that the DMV issued a license to when the driver found able to safely operate motor vehicle).

219. Vasiliki L. Tripodis, *Licensing Policies For Older Drivers: Balancing Public Safety With Individual Mobility*, 38 B.C. L. REV. 1051, 1082 (1997). It is noted that Maine and Pennsylvania have mandatory reporting. See *Papelian v. State of California*, 65 Cal. App. 3d 958 (1972) (DMV not liable for issuing driver's license who injure 3rd party).

220. Insurance Institute for Highway Safety, *US Driver Licensing Procedures for Older Drivers* (April 2006), http://www.iihs.org/laws/state_laws/older_drivers.html.

221. *Id.*

222. David Rosenfield, *From California to Illinois to Florida, Oh My!: The Need for a More Uniform Driver's License Renewal Policy*, 12 ELDER L.J. 449 (2004) (arguing for a federal mandate for license renewal). The article also addresses states' rights to regulate drivers as well as constitutional rights. See *id.*

person's desire for independence, as seen by the driving of one's automobile. For the elderly person claiming that the "driver's license represents a 'passport to independence—the last stop before a nursing home'" is real.²²³ The political pressure by such organizations that represent retired persons and automobile drivers has made mandatory licensing policies for older drivers uncommon.

The need for a comprehensive approach to license renewal at five year intervals commencing at age sixty-five is recommended. It is recommended that road tests and medical questions related to the driver's ability to safely drive a vehicle are employed to address the safety concerns and the desire for continued independence of the disabled driver.

XI. DEPARTMENT OF JUSTICE

The Department of Justice ("DOJ") has successfully championed protecting the rights of individuals with disabilities through lawsuits and settlement agreements.²²⁴ Because lawsuits can become quite costly and extremely time consuming, the DOJ may opt to resolve cases through written settlement agreements.²²⁵ In fact, the DOJ is required to negotiate a settlement before filing suit.²²⁶ The DOJ has entered into many settlement agreements with places of public accommodations that violate the ADA regulations for parking and accessibility for disabled drivers.²²⁷ Included in these agreements are accommodations such as access ramps, appropriate signage, and accessible parking spaces in close proximity to the entrance of the facility.²²⁸

In the settlement agreement between the United States of America and Poplarville Plaza, the shopping center agreed to designate parking spaces for individuals with disabilities close to the entrances of the businesses, construct curbs with lips no higher than ¼ of an inch, modify a sidewalk ramp to comply with the ADA standards for slope, construct handrails on the ramp, and mark accessible routes from the designated parking spaces to the sidewalk as pedestrian crosswalks.²²⁹ Other ADA violators similarly agreed to designate parking for individuals with disabilities, include van accessible parking spaces, and incorporate appropriate signage, which must be high enough so it is not

223. *Id.* at 472 n.169 (quoting Jennifer L. Klein, *Elderly Drivers: The Need for Tailored License Renewal Procedures*, 3 *ELDER L.J.* 309, 329 (1995)).

224. U.S. Dept. of Justice, *Enforcing the ADA: A Status Report from the Department of Justice 2*, Issue 2 (Apr.-June 2004).

225. *See id.* at 4.

226. *Id.* at 2.

227. *Id.* at 6-7.

228. *See id.*

229. Settlement Agreement Between the United States of America and Poplarville Plaza, DOJ complaint no. 202-41-34, <http://www.usdoj.gov/crt/foia/missipoplarpl.html>.

blocked by a parked vehicle.²³⁰ In addition to adding accessible parking, ramps, or other accommodations for individuals with disabilities, the DOJ may also require parties that violate the ADA to remove architectural barriers and policies that limit access to facilities.²³¹ In the settlement agreement between the United States of America and the Baltimore Ravens Limited Partnership, the NFL Ravens agreed to modify policies regarding accessible parking for disabled drivers who have club level or suite seating at the football stadium and to train employees on the modified policies and the location of accessible parking.²³² The DOJ settlement agreements often include the time frame in which the modifications must be made, as well as civil penalties and compensatory damages for the violations.²³³ As an alternative to civil penalties or compensatory damages, some offending parties have agreed to make donations to non-profit disability groups.²³⁴ The DOJ is an important tool in enforcing the rights afforded to persons with disabilities in the area of access and parking.

XII. CRIMINAL LIABILITY OF THE RECKLESS DISABLED DRIVER

Is the disabled driver who is involved in a motor vehicle collision simply an unavoidable accident or one with criminal culpability? How is the driver's general duty to exercise ordinary, reasonable care impacted when the disabled driver suddenly and unexpectedly has a loss of consciousness? In contrast, what are the legal implications when the disabled driver has knowledge of his medical condition, warned by his physician not to drive, and, against medical advice, gets behind the wheel?

What about the driver with a diagnosis of epilepsy, but seizure-free for a significant period of time, who unexpectedly suffers a seizure while driving? What are the legal consequences to the disabled driver who suffers blackouts, loss of consciousness, or blurred vision which are a result of medication side effects? When, if at all, are individuals held civilly or criminally liable for

230. See Settlement Agreement Between the United States of America and Village Developers, <http://www.usdoj.gov/crt/foia/indvillagedevel.html>.

231. Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and the Owners and Operators of the Airlie Conference Center, DOJ complaint no. 202-79-34, <http://www.usdoj.gov/crt/ada/airlie.htm>.

232. Settlement Agreement Between the United States of America and the Baltimore Ravens Limited Partnership Under the Americans with Disabilities Act of 1990 Concerning Accessible Parking at the PSINeT Stadium Located in Baltimore, Maryland, <http://www.usdoj.gov/crt/ada/bravens.htm#anchor262953>.

233. See Settlement Agreement Between the United States of America and Michael Gindling, <http://www.usdoj.gov/crt/foia/dairrypt.txt>.

234. See Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Lone Star Steakhouse & Saloon, Inc., <http://www.usdoj.gov/crt/foia/f18.txt>.

reckless or negligent actions that cause injury to others while driving? Courts appear to be split on the question.

In *Robertson v. State*, a Texas court was confronted with a driver who suffered from a grand mal seizure, lost control of his car, and killed a nine-year-old girl.²³⁵ The court faced the question of whether the driver recognized the imminent danger and had a conscious and "unjustifiable disregard of that danger when he decided to drive his car prior to the fatal action."²³⁶ The recklessness of the driver was presented in three phases: failure to take the prescription anti-epileptic medication, driving against medical instruction, and driving with knowledge of his seizures.²³⁷ The driver was convicted of manslaughter by a jury and the appeals court noted that the driver's history of past auto accidents caused by seizures shows a conscious disregard of the danger to other motorists and the public based on such knowledge.²³⁸

Another court finding criminal culpability on the part of the disabled driver was handed down in *State v. Jenkins*.²³⁹ The jury convicted the driver of two counts of involuntary manslaughter and of making false information following a fatal traffic accident.²⁴⁰ The prosecutor's theory was that the driver, knowing his propensity for epileptic seizures, including recommendations by his physician not to drive, endangered other drivers.²⁴¹ The reckless conduct by the driver was described by the court as conduct that shows a realization of the imminence of danger to another and a conscious and unjustifiable disregard of that danger.²⁴² The knowledge of the imminent danger created by the epilepsy before driving and conscious disregard knowing of his propensity to have seizures was the focal point for the jury.²⁴³

In *Commonwealth v. Cheatham*, the appeals court examined the conviction of homicide by vehicle in the case of a driver who blacked out

235. *Robertson v. State*, 109 S.W.3d 13, 14 (Tex. Ct. App. 2003).

236. *Id.* at 19.

237. *Id.* The reckless actions of driver demonstrate criminal culpability. *See id.* at 20-21.

238. *Id.* at 14, 21. The driver was found guilty of manslaughter and sentenced to 15 years in prison. *Id.* at 14.

239. *State v. Jenkins*, 39 P.3d 47 (Kan. 2002).

240. *Id.* at 51.

241. *Id.* The auto accident killed two children. *Id.* The state presented evidence of seven prior auto accidents of driver. *Id.*

242. *Jenkins*, 39 P.3d at 54. This is also described as gross negligence, culpable negligence, wanton negligence. *Id.* *See also* *People v. Eckert*, 138 N.E.2d 794 (N.Y. 1956) (driver's prior knowledge of risk of driving was reckless driving).

243. *Jenkins*, 39 P.3d at 54., The seizure was not a surprise to the driver. *Id.* *See also* *State v. Freeman*, C.C.A. No. 02C01-9406-CR-00113, 1995 Tenn. Crim. App. LEXIS 119 (February 15, 1995) (driver convicted of criminally negligent homicide; driver suffered a seizure and court found a gross deviation from standard of care by driver's choice of operating motor vehicle knowing she was prone to epileptic seizures when not taking her medication).

while driving.²⁴⁴ The driver had a history of seizure disorder, was taking medication for such seizures, and had a prior seizure three and a half months prior to the incident.²⁴⁵ The court examined whether the driver's actions constituted conduct raised to the level of a gross deviation from the standard of care a reasonable person would observe.²⁴⁶ In concluding that the driver's conduct was sufficiently reckless and wanton to rise to a level of criminal culpability, the court focused on the driver's knowledge of the frequency of his seizures and that even with medication his seizures came on without warning, "and he knew that the Commonwealth of Pennsylvania required that he be seizure-free for one year before being licensed to drive."²⁴⁷ Despite such knowledge, as well as his license being suspended, he chose to drive.²⁴⁸

The significance of the knowledge a driver possesses, especially in regard to his medical condition and the risks associated with driving, are key factors in assessing criminal culpability. The awareness of a condition which a driver knows may produce an automobile collision and such disregard of the consequences renders the driver liable for culpable negligence.²⁴⁹

The significance of a driver's history of epilepsy, the nature of such seizures, and the risks involved are key in determining the culpability of a driver. In *Knight v. Miller*, the driver who claimed her loss of consciousness, which resulted from an epileptic seizure, was sudden and unforeseeable was rebuked.²⁵⁰ The court determined that the driver failed to show her loss of consciousness was unforeseeable.²⁵¹ The civil rather than criminal penalty assessed to the driver is the route taken in many such cases; here a monetary judgment was the result.²⁵²

The criminal culpability is much less certain for the driver who experiences an unexpected or unforeseen medical emergency. In *Roman v. Estate of Gobbo*, the driver suffered an incapacitating heart attack, which he

244. *Commonwealth v. Cheatham*, 615 A.2d 802 (Pa. Super Ct. 1992). The driver lost control of the car hitting three children sitting on a fence killing one and injuring two others. *Id.* at 803.

245. *Id.*

246. *Id.* at 806.

247. *Id.* at 807.

248. *Id.* That conduct was a gross deviation from standard of care of a reasonable person.

249. *See People v Decina*, 138 N.E.2d 799, 804 (N.Y. 1956). This case is distinguished from the situation of a sudden sleeping spell or unexpected heart attack because here there was prior knowledge of the driver's condition. *Id.* at 804.

250. *Knight v. Miller*, 503 So.2d 120 (La. Ct. App. 1987). The driver had a medical history of epilepsy since age 10. *Id.* at 122.

251. *Id.* at 124.

252. *Id.* at 121. The injured person was awarded \$22,000 in compensation. *Id.* *See also Bashi v. Wodarz*, 53 Cal. Rptr.2d 635 (Cal. Ct. App. 1996) (mental illness of driver does not preclude financial responsibility).

had no reason to anticipate or foresee, and was suddenly stricken with a period of unconsciousness, rendering it impossible to control his car.²⁵³

The sudden and unforeseen loss of consciousness due to a first time epileptic seizure was evidenced in the case of *Solorio v. United States*.²⁵⁴ The driver's seizure was not reasonably foreseeable to prevent the accident, thus beyond the control of the driver.²⁵⁵ The reasonable prudent man standard is outlined in the case of *Goodrich v. Blair*, in which an eighty year old driver suffered a sudden heart attack, causing his vehicle to cross the median into oncoming traffic, injuring several individuals.²⁵⁶ The court noted that the key point of inquiry is the decision to drive at all.²⁵⁷ The court stated,

[i]f the defendant's health was such that a reasonably prudent man would not risk driving a car, then the defendant is negligent by merely undertaking the task of driving, regardless of subsequent events.. If, on the other hand, a person is not negligent in choosing to drive his car, then he is not negligent when he loses control of that car due to a heart attack.²⁵⁸

Another key factor in assessing the driver's culpability is foreseeability. According to *Deason v. State Farm Mutual Automobile Insurance Co.*, the driver who "suddenly loses consciousness from an unforeseen cause, and is unable to control the vehicle, is not chargeable with negligence."²⁵⁹ The "exception to the general rule exists where a person knows that he is suffering from an illness which will likely cause his loss of consciousness."²⁶⁰ When a driver with a medical condition possesses the knowledge of his situation and consciously chooses to ignore the risk to the public, criminal culpability will

253. *Roman v. Estate of Gobbo*, 791 N.E.2d 422 (Ohio 2003). The negligence of the driver was excused.

254. *Solorio v. U.S.*, 228 F. Supp. 2d 1280 (D. Utah 2002).

255. *See id.* at 1283-85. A driver is only liable for negligence for actions he should have foreseen. *Id.* at 1283.

256. *Goodrich v. Blair*, 646 P.2d 890 (Ariz. Ct. App. 1982). The driver was pronounced dead from a coronary occlusion. *Id.* at 892. It was determined his sudden incapacity made him no liable for conduct. *Id.*

257. *Id.* at 892.

258. *Id.* The jury concluded driver's heart attack not reasonably foreseeable at time he chose to drive. *Id.*

259. *Deason v. State Farm Mutual Automobile Ins. Co.*, 209 So.2d 576, 577 (La. Ct. App. 1967). The driver had a heart attack while driving, but the court stated that a sudden loss of consciousness is a complete defense to negligence if it is not foreseeable. *Id.*

260. *Moore v. Presnell*, 379 A.2d 1246, 1248 (Md. Ct. Spec. App. 1977). A driver with history of cardiac problems was involved in an auto accident, and the driver, with such knowledge of his condition, drives anyway. *See id.* at 1246. *See also Williams v. Frohock*, 114 So.2d 221 (Fla. Ct. App. 1959) (driver excused from negligence when he suddenly blacks out with no warning of his condition).

arise. Failing to demonstrate such knowledge on the part of the driver should preclude criminal culpability.

The sudden and unforeseeable loss of consciousness by a driver that results in a vehicular accident should be a complete defense to a claim based on civil or criminal negligence. The knowledge of a driver's medical condition and resulting risk of blackout or loss of consciousness are the key turning points to culpability. The duty to exercise reasonable care and good judgment while driving are the cornerstones of safe driving. When a driver knows the loss of his ability to safely and properly operate and control the vehicle, the driver should be legally responsible for all injuries to others as a proximate result of the driver's failure to operate his vehicle.

XIV. THE FAIR HOUSING ACT

The Fair Housing Act ("FHA") was enacted to provide for fair housing throughout the United States, and to make it illegal to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap.²⁶¹ The housing discrimination law prohibits any person from refusing "to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such [disabled] person equal opportunity to use and enjoy a dwelling" unit, including public and common use areas.²⁶²

The FHA was utilized in the case of *Gittleman v. Woodhaven Condominium Ass'n*, in which a condominium owner with a disability requested exclusive use of a parking space to accommodate his disability.²⁶³ Although the court acknowledged that parking spaces are owned by the condominium unit owners as tenants in common in its Master Deed, the provisions are subject to the purview of the FHA, which in this case, finds the denial of accessible parking a discriminatory and unlawful act.²⁶⁴ The court clearly articulated that such actions by the condominium in refusing to make reasonable accommodations to afford such person equal opportunity to use and enjoy a dwelling were discrimination under the FHA.²⁶⁵

261. 42 U.S.C. §§ 3601-3619 (2000). The Act uses the term handicap, which is defined substantially the same as the term disability within the ADA.

262. *Id.* § 3604(f)(3)(B);. See also 24 C.F.R. §§ 100.204, 100.201 (2006) (accessible route which includes parking access aisles).

263. *Gittleman v. Woodhaven Condominium Assoc., Inc.*, 972 F.Supp. 894, 895 (D.N.J. 1997).

264. *Id.* at 899-900.

265. *Id.* at 903. Without the reserved parking space, plaintiff might be unable to live in Progress Gardens at all. *Id.*

In *Shapiro v Cadman Towers, Inc.*, a disabled person with multiple sclerosis successfully obtained a parking space on the ground floor of her building's parking garage.²⁶⁶ Relying on the FHA, the court required the apartment complex to incur reasonable costs to accommodate Shapiro's handicap in order for her to use and enjoy her dwelling.²⁶⁷

In certain instances, disabled individuals seek accessible parking spaces in front of their home on a public street, as was seen in *Trovato v. City of Manchester*.²⁶⁸ Sylvia Trovato and her daughter filed a complaint against the City of Manchester, New Hampshire for the purpose of building a paved parking space in front of their home.²⁶⁹ The court's analysis of the financial or administrative burden of disrupting the neighborhood and the benefit to the disabled home owner resulted in the conclusion that the parking request was a reasonable accommodation required by the FHA.²⁷⁰ Although an apartment complex is not required to designate a particular space for a disabled tenant, the FHA does mandate a disabled tenant should be able to park sufficiently near her apartment so as to equalize her opportunity to use and enjoy her dwelling.²⁷¹

The FHA can be successfully utilized by disabled individuals who simply seek accessible parking in close proximity to where they live. The provision of designated accessible parking spaces in private apartment complexes and condominium settings is vital to allowing disabled individuals an "equality of opportunity, full participation, independent living, and economic self-sufficiency" as stated in the ADA.²⁷²

XV. CONCLUSION

The rights of the disabled driver have advanced considerably since the enactment of the ADA. Reserved parking spaces are often provided so an individual with a disability may access goods, services, and employment opportunities. However, there continues to be a lack of sufficient accessible

266. *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995).

267. *Id.* at 335. They have to provide such accommodation so long as it does not pose undue hardship and substantial burden and does not displace existing residents. *Id.* See also *Lyons v. Legal Aid Society*, 68 F.3d 1512 (2d Cir. 1995).

268. *Trovato v. City of Manchester*, 992 F.Supp. 493, 495 (D.N.H. 1997).

269. *Id.* at 495.

270. *Id.* at 498.

271. *Hubbard v Samson Mgmt. Corp.* 994 F.Supp. 187 (S.D.N.Y. 1998). See also *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996) (apartment required to provide parking space close to building for disabled tenant as is required by reasonable accommodation of FHA). The number of accessible parking spaces provided at the apartment complex is a question of fact dependant on the number of disabled tenants seeking parking spaces. *Id.* at 895-96.

272. 42 U.S.C. § 12101(a)(8) (2000).

parking spaces for the disabled and the signage deficiencies exacerbate the problem. Only time will tell if the battle cry of “you take my space, I take your air” will again be heard as the disabled driver seeks accessible parking and the non-disabled driver grabs the closest parking spot for just a minute.

The Medical Advisory Board of the state’s Motor Vehicle Administration must continue to be diligent in monitoring disabled drivers who can safely drive on the road. The MAB’s role is crucial in providing a comprehensive, careful, and equitable process for monitoring, overseeing, and ensuring confidentiality in its oversight role.

The reasonable and fair balancing act between the safety concerns of the community at large and the rights of the disabled driver to operate a motor vehicle to access places of public accommodation must be struck. The ADA mandate designed to open up doors to allow the disabled driver to enter are a sterling example of the possibilities. Parking one’s car in a safe and accessible space is a crucial prerequisite to access inside the public accommodation and an opportunity to participate in the mainstream of society.

On the horizon for the disabled driver are physician’s reporting obligations to the Motor Vehicle Administration regarding disabled drivers. Also, with the population of older Americans with disabilities on the rise, the retesting of drivers at age 65 or over will continue to pose challenges for our community. The ability to drive on the highway is part of the American dream, demonstrating independence and freedom. Hopefully, the public will allow full and complete access for all places open to the public.

Appendix A

2005-2006 Disability Parking Survey

Survey completed by _____ Date _____

Name and address of public accommodation surveyed:

CIRCLE the number of the category of the public accommodation surveyed

“Place of public accommodation means a facility, operated by a private entity whose operations affect commerce and fall within at least one of the following categories:”

1. An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;
2. A restaurant, bar, or other establishment serving food or drink;
3. A motion picture house, theater, concert hall, stadium, or other place of exhibition or public entertainment;
4. An auditorium, convention center, lecture hall, or other place of public gathering;
5. A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
6. A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
7. A terminal, depot, or other station used for specified public transportation;
8. A museum, library, gallery, or other place of public display or collection;
9. A park, zoo, amusement park, or other place of recreation;
10. A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
11. A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment;
12. A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

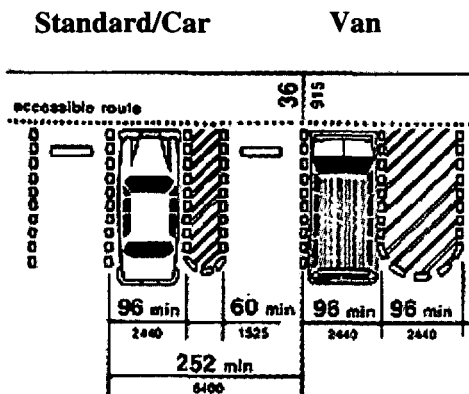
Helpful information for completing the survey

A. A tape measure is needed to complete this survey.

B. Definitions:

1. **Accessible space** = parking space must have sufficient space alongside the vehicle ("access aisle") so that persons using mobility aids, e.g. wheelchairs, can transfer and maneuver to and from the vehicle. Accessible parking spaces also require the appropriate designation (sign or marking with access symbol) and locations of spaces (closest to facility entrance as possible) and their connection to an accessible route.
2. **Access aisle** = space alongside the vehicle for persons using mobility aids to transfer and maneuver in and out of and to and from the vehicle
3. **Accessible route** = pathway from access aisle to accessible entrance of facility

C. Diagram: **Dimensions of Parking Spaces**



(a)
Van Accessible Space at End Row

Fig. A5
Parking Space Alternatives

1. A **standard accessible space** is 8 feet (96") wide plus a 5 foot (60") access aisle, for a total of 13 feet (146").
2. A **van accessible space** is 8 feet (96") wide plus an 8 foot (96") access aisle, for a total of 16 feet (192").
3. The **accessible route** connected to the access aisle at the front of the parking spaces must be a minimum of 3 feet (36").

Disability Parking Survey

1. Does the facility have a parking lot on the premises?
Circle: YES or NO.
2. Is there one or more off-street parking space either permanently or temporarily assigned for people with disabilities?
Circle: YES or NO.

***** If the answer to question 1 is NO, and the answer to question 2 is YES, skip to question 12*****

3. How many accessible spaces (i.e. access aisle, designation, close proximity to entrance, and accessible route requirements are all present; refer to definition on page 2) are in the parking lot? _____
4. If parking spaces meet some but not all of the four requirements of an accessible space, **CIRCLE** those that are deficient:
 - a. access aisle
 - b. designation
 - c. location/close proximity to entrance
 - d. accessible route
5. Based on the chart below, is the minimum required number of accessible parking spaces available?
Circle: YES or NO.

In the chart below, **CIRCLE** the range of total spaces in the lot.

Total Parking In Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

6. Is there at least one parking space that is van accessible (refer to page 2)?
Circle: YES or NO.

7. How many of the accessible spaces are van accessible? _____

8. Are the accessible parking spaces, including van spaces, at least 96 inches (8 feet) wide with an access aisle (two spaces may share a common access aisle; see page 2)?
Circle: YES or NO.

9. If the parking space is designated as "van accessible," is the adjacent access aisle at least 96 inches (8 feet) wide (refer to diagram on page 2)?
Circle: YES or NO.

10. Are all other access aisles at least 60 inches (5 feet) wide (refer to diagram on page 2)?
Circle: YES or NO.

11. Are the access aisles, which run the length of the parking space and are indicated by cross-hatching (see diagram on page 2), part of the accessible route to the accessible entrance?
Circle: YES or NO.

12. Is the parking area surface smooth and slip-resistant (e.g. concrete or asphalt; not gravel)?

Circle: YES or NO.

13. Are there any obstructions (For example: snow, sand, trash cans, grocery carts) in the accessible spaces or access aisles?

Circle: YES or NO.

If YES, what are the obstructions?

14. Is there at least one accessible route to the accessible entrance?

Circle: YES or NO.

- a. To the maximum extent possible, does it coincide with the route for the general public?

Circle: YES or NO.

- b. Is the accessible route a minimum width of 36"?

Circle: YES or NO.

15. Whenever an accessible route crosses a curb, there must be a ramp. Is the slope of the ramp, from the parking lot to the sidewalk, no greater than 1:12? (See explanation below)

Circle: YES or NO

- Slope is given as a ratio of the height to the length. 1:12 means for every 12 inches along the base of the ramp, the height increases one inch. For a 1:12 maximum slope, at least one foot of ramp length is need for each inch of height.

16. Are the accessible spaces the closest parking spaces to the accessible entrance?

Circle: YES or NO.

17. Are accessible spaces marked with the International Symbol of Accessibility?

Circle: YES or NO



18. Are van accessible spaces marked with "Van Accessible" signs?
Circle: YES or NO.
19. Are there signs in front of the aisle of van accessible spaces indicating "No parking in access aisle"?
Circle: YES or NO.
- a. If the sign is flushed against a building, is it at least 6 feet high, but no more than 10?
Circle: YES or NO.
- b. If the sign is not flushed against a building, is it at least 7 feet high?
Circle: YES or NO.
20. Does the sign indicate the maximum fine for parking illegally in the accessible space?
Circle: YES or NO.
If yes, what is the fine? _____
21. At the time of completing this survey, how many vehicles are parked in the accessible spaces? _____
- a. Of those, how many are **lawfully** parked? _____
"Lawfully" means the vehicle contains a disabled designation on the license plate or a valid, current (i.e. not expired), placard hanging from the rearview mirror.
- b. How many vehicles, are **unlawfully** parked? _____

I understand that this questionnaire that I am completing for Donald H. Stone will be used for his research and scholarly writing. I give Professor Stone permission to use direct quotations from this questionnaire at his discretion. I understand that I will retain anonymity in the writing of this article.

Date: _____ Name: _____ Telephone: _____
(Please Print)

Address:

Email Address: _____

Signature: _____